Supreme Court, U.S.
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In The

Supreme Court of the United States

HONORABLE PATRICIA KINSEY,

Petitioner,

v.

FLORIDA JUDICIAL QUALIFICATIONS COMMISSION,

Respondent.

On Petition For Writ Of Certiorari To The Florida Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

IS CANON 7A(3) OF THE FLORIDA CODE OF JUDICIAL CONDUCT, AS INTERPRETED AND APPLIED BY THE FLORIDA SUPREME COURT, AN UNCONSTITUTIONAL RESTRICTION OF A JUDICIAL CANDIDATE'S SPEECH?

PARTIES TO THE PROCEEDINGS

Petitioner is the Honorable Patricia Kinsey, a duly elected judge of the County Court of Escambia County, Florida. She was the respondent in a complaint filed by the Florida Judicial Qualifications Commission.

Respondent is the Florida Judicial Qualifications Commission. It brought the complaint against Judge Kinsey which resulted in the judgment issued by the Florida Supreme Court.

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PETITION FOR WRIT OF CERTIORARI

Petitioner petitions for a writ of certiorari to review the judgment of the Florida Supreme Court.

OPINION BELOW

The Florida Supreme Court opinion (Appendix A) is reported at *In Re Kinsey,* 842 So.2d 77 (Fla. 2003).

STATEMENT OF JURISDICTION

The judgment of the Florida Supreme Court was entered January 30, 2003. Petitioner's motion for rehearing was denied March 26, 2003.

The jurisdiction of this court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the First and Fourteenth Amendments to the United States Constitution. The First Amendment states in pertinent part:

> "Congress shall make no law . . . abridging the freedom of speech."

The Fourteenth Amendment states in pertinent part:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizen of the United States."

STATEMENT OF THE CASE

In 1998 Patricia Kinsey resigned her position as an assistant state attorney and ran for election to the office of county judge in Escambia County, Florida.[1] Her opponent, William Green, was a twelve-year incumbent who, at the first candidates' forum where he and Judge Kinsey debated each other, opened his presentation by telling the audience, "it's just not right to run against a sitting judge."

The campaign was hotly contested and centered on the incumbent's lenient treatment of convicted criminals, his failure to properly protect the community from potentially dangerous criminals, his anti-law enforcement attitude, and his abusive treatment of victims of crimes.

Judge Kinsey began her legal career as a misdemeanor prosecutor in county court and later as a felony prosecutor in the circuit court. During her service as an assistant state attorney, she earned a reputation as a tough but fair prosecutor who worked hard to protect victims of crime and ensure criminal defendants received fair trials. She was highly respected by the law enforcement officers with whom she worked, and the law enforcement community was a major supporter of her campaign.

Judge Kinsey had been assigned to William Green's division when she first became an assistant state attorney. She had an early encounter with his judicial philosophy after a day of misdemeanor judge trials when he found all

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[1] Florida law requires a candidate who holds a public office to resign that office as a prerequisite to seeking elective office.

defendants not guilty. Concerned she was presenting her cases poorly, she asked what she was doing wrong. The incumbent replied she was doing nothing wrong; when the only evidence was the word of a law enforcement officer against the word of a defendant, he ruled for the defendant every time.[2]

During his years on the bench, the incumbent earned the reputation of being anti-law enforcement and abusive to domestic violence victims.[3] Years before the election, law enforcement officers had given him the nickname "let em go Green" because of his failure to hold criminals accountable. Officers often requested prosecutors dismiss cases assigned to his division because the officers believed it was pointless to come to court.

Judge Kinsey recognized that unless the average voter is called for jury service or has the misfortune of being a victim of a crime, he or she has little contact with the criminal justice system. Therefore, she utilized a series of campaign brochures, radio commercials and a debate on a local radio talk show to inform voters of her qualifications, experience and the philosophy she would bring to the office. These methods were also used to inform voters why

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[2] Another assistant state attorney testified at the Judicial Qualifications Commission hearing that the incumbent made the same statement to her several years later when she was the prosecutor assigned to his court.

[3] The same assistant state attorney who corroborated the incumbent made the "always rule for the defendant" statement also testified the incumbent was so abusive to domestic violence victims that she would warn them about him before they appeared in his court.

she believed the incumbent was not performing his duties properly and should be replaced.

One brochure used reprints of newspaper articles reporting an incident in which the incumbent "tested" an elderly couple by offering to jail them to "protect" them from their abusive son.[4] Another brochure examined the cases of three dangerous defendants and criticized how the incumbent handled them. One involved a very lenient sentence imposed on a multiple offender. The other two cases involved defendants charged with serious, violent crimes who appeared before the incumbent for initial appearances following arrest and were granted what Judge Kinsey felt were nominal bonds which failed to protect the community. Since the judges who issued the original arrest warrants both specified "no bond" and two superior judges revoked the bonds set by the incumbent, these cases gave voters the valuable information that four superior judges agreed the incumbent's actions were wrong.

During a radio debate with the incumbent, Judge Kinsey discussed how the sentencing philosophy of a judge affects the message sent to the community and how the incumbent had failed to hold criminal defendants properly accountable for their crimes. During this discussion she also made a comment that she believed a judge should

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[4] The incumbent's conduct in this case was so outrageous the average voter would have had difficulty believing a judge would treat an elderly couple in this way unless the conduct was documented by an independent third party. The incumbent admitted to the newspaper reporter that he "tested" victims by offering to jail them for their own protection.

consider community attitudes in deciding a proper sentence.

Judge Kinsey won the election by a 2 to 1 margin and took office in January 1999. In September 1999, the Florida Judicial Qualifications Commission filed eleven formal charges against her alleging ethical violations based on her conduct during the campaign. The charges were amended in March 2000 to add an additional allegation. The hearing panel of the Judicial Qualifications Commission held a hearing on June 12 and 13, 2000, and found her guilty of nine ethical violations.

The Judicial Qualifications Commission issued its Findings, Conclusions and Recommendations on October 18, 2000. The parties submitted briefs to the Florida Supreme Court, including supplemental briefs which were requested after this court issued its opinion in *Republican Party of Minnesota v. White*, 122 S.Ct. 2528 (2002).

The Florida Supreme Court issued its opinion January 30, 2003. The majority rejected Judge Kinsey's First Amendment challenge and held this court's decision in *Republican Party of Minnesota v. White* was inapplicable to her speech as it was limited to Minnesota's "announce clause." Judge Kinsey was found guilty of eight of the nine charges, ordered to pay a $50,000 fine and to appear before the court for a public reprimand. *In Re Kinsey,* 842 So.2d 77 (Fla. 2003). Judge Kinsey filed a motion for rehearing which was denied March 26, 2003.

REASONS FOR GRANTING THE WRIT

I. CANON 7A(3) OF THE FLORIDA CODE OF JUDICIAL CONDUCT, AS INTERPRETED AND APPLIED BY THE FLORIDA SUPREME COURT, IS AN UNCONSTITUTIONAL RESTRICTION OF A JUDICIAL CANDIDATE'S SPEECH AND DIRECTLY CONFLICTS WITH THE FIRST AMENDMENT AND THE DECISION OF THE SUPREME COURT IN *REPUBLICAN PARTY OF MINNESOTA ET AL. v. WHITE, CHAIRPERSON, MINNESOTA BOARD OF JUDICIAL STANDARDS, ET AL.*

II. IF CANON 7A(3) OF THE FLORIDA CODE OF JUDICIAL CONDUCT IS ALLOWED TO STAND AS INTERPRETED AND APPLIED IN JUDGE KINSEY'S CASE, IT WOULD CREATE THE "STATE-IMPOSED VOTER IGNORANCE" CONDEMNED BY THE MAJORITY IN *WHITE* AND END MEANINGFUL JUDICIAL ELECTIONS IN FLORIDA.

For many years Florida's constitution has contained different methods for selecting and retaining trial and appellate judges. Appellate judges are appointed by the governor from a list of nominees furnished by the judicial nominating commission for the particular jurisdiction where the vacancy exists and are retained in office after expiration of their term by a merit retention process.

If an appellate judge desires to remain in office after the normal expiration of his or her term, the judge's name is placed on the ballot of the general election immediately preceding expiration of the term. Voters are asked "shall judge *(name of judge)* be retained in office?" Voters have no choice other than "yes" or "no." If a majority answer "yes,"

the judge continues in office for another term. If a majority answer "no," a vacancy is created upon expiration of the term and is filled by gubernatorial appointment.[5]

Florida's citizens adopted a very different method of selecting and retaining their two levels of trial judges. Trial judges are elected by popular vote in nonpartisan elections in which voters choose from a slate of candidates. A judge who desires to remain in office for another term may face opposition and have to defeat an actual opponent in order to retain the office.[6]

The Florida Bar has officially opposed election of trial judges. It endorsed and campaigned for adoption of a proposed constitutional amendment which would have adopted merit retention for trial judges. The proposed amendment, which appeared on the November 2000 general election ballot, would have abolished contested judicial elections and made trial judges subject to the same merit retention process as appellate judges.

The proposed amendment was unusual in that it would have permitted individual counties or judicial circuits to adopt merit retention for their trial judges without any requirement it be adopted state-wide.[7] In

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[5] Since Florida instituted merit retention for appellate judges, no appellate judge has been voted out of office.

[6] Vacancies on the trial bench which occur midterm are filled by gubernatorial appointment. The appointed trial judge must later stand for election to retain the office.

[7] The proposed amendment appears to have been drafted to allow piecemeal adoption of merit retention in the hope it would be adopted in some jurisdictions, thereby allowing the proverbial camel to "get his nose under the tent."

spite of the Bar's support, the proposed amendment was rejected by voters in every jurisdiction in Florida, sending a clear message Florida's citizens believe it is important to retain the right to elect their trial judges.

In view of this court's decision in *Republican Party of Minnesota v. White,* 122 S. Ct. 2528 (2002) it should be unnecessary for petitioner to have to ask this court to again address the issue of what speech is permissible during judicial elections. Unfortunately, a majority of the Florida Supreme Court views the *White* decision as so narrow that it is inapplicable to Canon 7 of Florida's Code of Judicial Conduct.[8]

Florida's current version of Canon 7 was adopted in 1994 in apparent recognition of the problems with the "announce clause" that district judge William Stafford found unconstitutional in *American Civil Liberties Union of Florida, Inc. v. The Florida Bar*, 744 F.Supp. 1094 (N.D. Fla. 1990). Although the current version of Canon 7 is more narrowly drawn than its predecessor, petitioner believes it is still unconstitutional as it impermissibly restricts her First Amendment right to provide voters with information needed to make a reasoned choice between her and the incumbent.[9]

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[8] Immediately after the *White* decision was published, the chairman of the Florida Judicial Ethics Advisory Committee mailed an "explanation" of the ruling to every judicial candidate which stated *White* "has no impact on the statutory or code provisions which regulate judicial elections in Florida."

[9] Explaining his announcement that *White* had no effect on Florida judicial campaigns, the chairman of the Judicial Ethics Advisory Committee was quoted in the August 1, 2002, edition of *The Florida*

(Continued on following page)

Petitioner acknowledges logical arguments can be made for adopting merit retention for Florida's trial judges. However, since a majority of Florida's citizens have chosen to continue judicial elections, the Judicial Qualifications Commission and the Florida Supreme Court should not be permitted to circumvent the First Amendment by restricting candidates' speech to the extent voters remain ignorant of candidates' judicial philosophies, positions on disputed legal issues and criticism of opponents' qualifications and job performance.

Canon 7A(3) of the Florida Code of Judicial Conduct regulates the conduct of candidates, including incumbents, seeking election to judicial office.

Subsection 7A(3)(a) states a candidate:

> (a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

Subsection 7A(3)(d) states a candidate shall not:

> (i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of office;

Bar News as stating "all a candidate can tell you is: 'I love the law. I believe in the law. Are there things I don't like about the law? Yes, but as a judge it's my job to enforce the law the way it's written, and that's what I am going to do.' Asking judges to do more is committing them to a course of action they cannot carry out."

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court;

(iii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent.

The Florida Supreme Court was clearly troubled that Judge Kinsey's campaign brochures stressed her service as an assistant state attorney, her support by the law enforcement community and the danger to the community caused by the incumbent's failure to hold criminals accountable. The court cited the following examples of speech from Judge Kinsey's campaign brochures as violating Canon 7:

- Distribution of a campaign brochure containing a full-page photograph of her standing with ten heavily armed police officers which was captioned "Who do these guys count on to back them up?"
- Language in two brochures stating "[Y]our police officers expect judges to take their testimony seriously and to help law enforcement by putting criminals where they belong . . . *behind bars*!"
- Language in a brochure that said "Above all else, Pat Kinsey identifies with the victims of crime."
- Language in a brochure saying "We must support our hard-working law enforcement officers by putting criminals behind bars, not back on our streets."

- Language in a brochure that "Pat Kinsey will support our valiant law enforcement officers . . . not make their job harder."
- Language in a brochure that "Pat Kinsey will bend over backward to ensure honest, law-abiding citizens are not victimized a second time by the legal system that is supposed to protect them."
- Language in a brochure that "Victims have a right to expect judges to protect them by denying bond to potentially dangerous offenders."

Although the Florida Supreme Court reluctantly acknowledged the First Amendment affords judicial candidates some right to make statements during their campaigns, it appears to feel that, while limited speech is acceptable, too much speech violates Canon 7. After citing the examples from Judge Kinsey's brochures, the court said "[A]lthough some of these charges taken in isolation would not violate the judicial canons, taken together it becomes clear that Judge Kinsey was running on a platform which stressed her allegiance to police officers." *In Re Kinsey,* 842 So.2d 77, 88 (Fla. 2003). It then used a footnote to state

> [C]harge 5, for example, also contains other alleged examples of misconduct, such as highlighting that she had the "unanimous support of law enforcement" and was endorsed by both the Florida Police Benevolent Association and the Fraternal Order of Police. This type of endorsement may certainly be brought to the attention of the voters and is not prohibited by judicial canons. However, based on other statements contained in brochures addressed above, Judge Kinsey went beyond the permissible boundaries.

All of the statements the court found violated Canon 7 have their roots in specific aspects of the incumbent's job performance and were used to make voters aware of problem areas. For example, had he treated law enforcement officers' testimony in the same manner as the testimony of criminal defendants, there would have been no reason to bring this to voters' attention. The same would have been true if he held criminals properly accountable and protected the community by denying bond to violent offenders.

Even if some restriction of a judicial candidate's right of free speech is constitutionally permissible, Florida's Canon 7 is not sufficiently narrow (especially in light of its interpretation by the Florida Supreme Court) to survive constitutional scrutiny. Although the language of Florida's Canon 7 is not the same language directly addressed in *White*, the focus should more properly be on the speech sought to be regulated rather than the words used to accomplish the attempted regulation.

In addition to the campaign brochures, one charge (Charge 4) was based on comments made by Judge Kinsey during a radio debate with the incumbent. The Judicial Qualifications Commission alleged her comments violated the canons because they "exhibited a hostility or apparent hostility towards defendants in criminal cases." The Judicial Qualifications Commission also contended her failure to disavow a caller's statement that he knew she was "pro-law enforcement" and her "attempt to portray the incumbent" as "still in that defense mode" left the impression she would not rule in an even-handed and impartial manner.

The Judicial Qualifications Commission hearing panel found her "not guilty" of the "failure to disavow" but

"otherwise guilty as charged" of Charge 4. However, the Florida Supreme Court disagreed and found the charged comments did not violate Canon 7 as they "addressed the manner in which Judge Kinsey's background as a prosecutor prepared her for the position of county judge."

Although at that point the hearing panel and the Florida Supreme Court had found Judge Kinsey "not guilty" of the original allegations of Charge 4, the Florida Supreme Court on its own initiative found a violation of Canon 7A(3)(a) based on other comments Judge Kinsey made during the debate. Although these comments had not been delineated in the formal charges, the court focused on a fragmented quote from the radio debate which contained the words "judge's responsibility" and "absolutely a reflection of what the community wants." It then linked them together to conclude they were contrary to Canon 3B(2) which states, "A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism." Since judges have a responsibility to uphold the constitutional and statutory rights of litigants, the court found these comments violated Canon 7A(3)(a).[10]

Even if it is assumed that comments, without actual action, by a non-judge can violate Canon 3B(2), examination of the transcript of the radio debate makes it clear Judge Kinsey was discussing sentencing philosophy and

[10] The court previously held only Canon 7 applied to candidates who were not judges. However, it then found this comment violated Canon 3B(2) and was therefore a violation of Canon 7A(3)(a).

how a judge's sentencing philosophy affects the community. The transcript clearly indicates the comment was made during a portion of the debate which centered on accountability and sentencing philosophy and whether the particular judge to which a case is assigned can affect its outcome. It is also clear the transcript is not complete and not accurately quoted by the Florida Supreme Court. The transcriber indicated an interruption in one portion of Judge Kinsey's comments and, by use of an ellipsis, that other portions of her comments were inaudible. The actual transcript of this portion of the debate reads (Luke McCoy is the host of the talk show):

> Pat Kinsey: And I think your caller brought up, Randy brought up, was something that's very important. And I think the reason that we're seeing such an explosion of juvenile crime is because the word is out on the streets. You are not going to be held accountable for what you do. And this word travels. There is a grapevine in the criminal system, in the criminal element, that you would just not believe, Luke. I mean we hear them back in lockup talking. And you can hear them back there saying, Who've you got, man? Who've you got? Ah! man, I've got Judge Tarbuck. I am in deep trouble. Who've you got? They know who's gonna hold them accountable. And they know whether or not they're going to be held . . .
>
> Luke McCoy: Are you suggesting that the particular Judge makes the difference?
>
> Pat Kinsey: It absolutely makes the difference? (sic) And I . . .
>
> Luke McCoy: But it's the same law?

> Pat Kinsey: It's the same law, but Judges are accountable to the community. A Judge's responsibility is to make sure (interruption) . . . it's absolutely a reflection of what the community wants . . .
>
> Luke McCoy: Explain that to me then, Judge. The law . . . there is the law. The Judge has a framework within which he or she works, right? Is allowed to work?
>
> Judge Green: Indeed.
>
> Luke McCoy: To what extent does that dictate, what happens, to what extent can the Judge be lenient or tough. To what extent does the particular Judge and the personality and the belief of a particular Judge have a bearing on a case?
>
> Judge Green: Well certainly, it can have a bearing. But I think a Judge has a responsibility to the entire system. Now let me tell you, they're building this jail over here and it's going to increase our capacity by 500 beds. (Judge Green then talked about the cost and capacity of the new jail).

Even if we assume the incomplete transcript is an accurate record of Judge Kinsey's remarks,[11] the court misapprehended her remarks. When the two fragments are examined in context of the debate, it is obvious she

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[11] It is impossible to determine from the transcript either the length of the interruption in her comments or what Judge Kinsey said during the gaps indicated by the ellipsis. However, it is clear that when she used the word "it's," she was referring to something other than a judge's responsibility.

was not stating a judge must decide cases in accordance with community feelings but was expressing (1) her belief that trial judges, like all elected officers, are accountable to the electorate and (2) her personal philosophy that a judge has a responsibility to reflect community values during the sentencing process. At most, these incomplete comments are no more than a statement of her personal philosophy that a judge should consider community values in determining an appropriate sentence and are protected speech.

Although Minnesota's "announce" clause was the vehicle that brought *White* before this court, the essence of the decision is its delineation of the extent to which the First Amendment prohibits restriction of judicial candidates' campaign speech. Even if the "pledges or promises" clause in Florida's code is not unconstitutional on its face (which Justice Kennedy apparently believes it is), it is unconstitutional as applied by the Florida Supreme Court to the statements in Judge Kinsey's campaign brochures and radio debate.

Although less directly impacted by *White,* the allegations of intentional misrepresentation in Charges 7 and 9 are protected speech as Canon 7A(3)(d)(iii) was applied to the facts of this case. Charge 7 was based on a campaign brochure composed primarily of reprints of articles and an editorial in the *Pensacola News Journal* which examined the abusive manner in which the incumbent treated two elderly victims when they appeared before him seeking protection from their mentally disturbed son.

The charge centered on the brochure's use of the language "Judge William Green offered to jail the elderly couple instead!" in the headline followed by "That's right.

Instead of revoking Grover Heller's bond and putting this abusive punk in jail, Judge William Green offered to put his elderly parents in jail! Incredible." The Judicial Qualifications Commission found this was a knowing misrepresentation on the basis that the use of the word "instead" misrepresented the fact the bond was eventually revoked. However, to make this finding the Commission had to ignore three specific references in newspaper reprints in the brochure which stated the bond was eventually revoked. Choosing to ignore the three references, the Florida Supreme Court stated,

> Upon reviewing the pamphlet, it is clear that voters were not meant to read each of the articles: the reprinted articles had very small print and most of the articles were stacked on top of each other so portions of the articles could not be read. More importantly, a voter should not be required to read the fine print in an election campaign flyer to correct a misrepresentation contained in large, bold letters. *In Re Kinsey,* 842 So.2d 77, 90 (Fla. 2003).

Judge Kinsey believed voters have a legitimate interest in how judges treat litigants, witnesses, court personnel and attorneys who appear in court. The purpose of this brochure was to give voters information they could use to evaluate how the incumbent treated citizens who appeared before him. His treatment of Heller's parents received significant press coverage when it occurred, and the campaign felt reprints of the newspaper articles would give voters the benefit of the reporter's and editor's disinterested opinions of the incumbent's actions. The newspaper articles also contained the incumbent's statement that he "occasionally" asked domestic violence victims if they

wanted him to put them in jail. He said this was a technique he used to judge the seriousness of the threat posed by the defendant.[12]

There is a dramatic contrast between the communication techniques used in the calm atmosphere of a courtroom and those necessary in election campaigns to gain the attention of voters and give them information. Population growth and modern society have rendered our forefathers' town meetings ineffective, and candidates are forced to communicate with large numbers of voters using mass media techniques. In view of the contrast, it is understandable the Judicial Qualifications Commission is troubled by the use of mass mailing techniques in judicial campaigns, especially when the message is hard hitting, critical of an incumbent, and lacks the politeness and decorum of the courtroom.

It may be a sad commentary on current society, but the Heller case was a "run of the mill" domestic violence case typical of many handled by our courts on a daily basis. The incumbent's treatment of the elderly victims was the sole reason it attracted attention and became the subject of a brochure. Whether or not Judge Green eventually revoked the bond was not relevant to that issue; if he had not offered to jail Heller's parents, the case would never have been mentioned in the campaign.

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[12] Assistant state attorney Clara Smith testified this was not the first time she witnessed Judge Green tell a victim he could have them jailed. Smith, who is also a registered nurse, testified that in an earlier case Judge Green threatened to jail a victim who had observable signs of physical injury.

The absence of a knowing misrepresentation is demonstrated by the ease with which virtually the same statement could have been safely made. Had Judge Kinsey had the slightest hint the use of the word "instead" would be interpreted as a misrepresentation of how the incumbent handled Heller's bond, she would have simply omitted "instead" from the headline and substituted "before" for "instead of," resulting in a phrase that read "That's right. Before revoking Grover Heller's bond and putting this abusive punk in jail, Judge William Green offered to put his elderly parents in jail. Incredible!" Neither minor change would have diminished the message of the brochure. Had Judge Kinsey sought to acquire an unfair advantage through misrepresentation, she would have been sufficiently astute to make these changes. Even if it is assumed this language is a misrepresentation, it is at most an honest mistake of failing to recognize what in reality is a minor error in syntax and is protected speech as recognized by the Eleventh Circuit in *Weaver v. Bonner*, 309 F.3d 1312 (11th Cir. 2002).

Charge 10 alleged Judge Kinsey made another knowing misrepresentation in a campaign brochure by giving the impression a criminal defendant named Stephen Johnson had been charged with attempted murder and burglary when he appeared before the incumbent for first appearance, since those specific charges were not actually pending at that time.

The Johnson case began when, in violation of a domestic violence injunction, Stephen Johnson went to his estranged wife's home in the early hours of the morning. Before breaking into her home, he cut the telephone line, unscrewed the bulb in the porch light, and taped a kitchen window to prevent glass from making noise when he broke

it.[13] In spite of his efforts, his wife awoke as he entered her home. He attacked and injured her, but her screams alerted a neighbor who called the sheriff's office. Johnson fled the scene before deputies arrived.

Circuit Judge Ed Nickinson issued a no bond warrant for Johnson's arrest. After his arrest, Johnson had a first appearance before Judge Green. In spite of Johnson's prior record,[14] his obvious violation of the domestic violence injunction, and the burglary and attack on his wife, Judge Green set a low bond, allowing Johnson to be released.

After first appearance the case was assigned to Judge Kinsey, then an assistant state attorney assigned to the felony division, for prosecution. After reviewing the case material available to Judge Green at first appearance and speaking to the victim, assistant state attorney Kinsey filed a motion to revoke Johnson's bond. After finding there were no conditions of release sufficient to protect the community from the risk of physical harm, Circuit Judge Joseph Tarbuck revoked the bond and ordered Johnson held for trial without bond.

Assistant state attorney Kinsey formally charged Johnson with attempted first degree murder, burglary with intent to commit a felony, violation of the domestic violence injunction and false imprisonment. Judge Kinsey

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[13] Examination of the crime scene revealed Johnson had also attached lengths of duct tape to the porch railing so he could bind his wife after removing her from the home.

[14] Johnson had prior convictions for manslaughter, grand larceny, and robbery.

readily acknowledged to the Judicial Qualifications Commission hearing panel that the sheriff's deputy who arrested Johnson had not initially charged him with these identical offenses. She admitted she made an error by failing to catch the mistake when she reviewed the draft of the campaign brochure. In her mind these had been the charges since her initial involvement in the case and, in the hectic pace of the campaign, she simply missed it.[15]

As pointed out by the Eleventh Circuit in *Weaver*, the prohibition against knowing misrepresentations should be used to discipline candidates who make intentional, malicious and substantial misrepresentations to gain unfair advantage over opponents. It shouldn't be permitted to be used as a mechanism to circumvent the First Amendment and sanction candidates who make honest mistakes or to second guess them on semantics susceptible to more than one interpretation.

If upheld, the Florida Supreme Court's interpretation of Canon 7 will have a chilling effect on any lawyer who considers challenging an incumbent and desires to inform voters why the incumbent should be replaced in office.[16]

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[15] The obvious purpose of prohibiting knowing misrepresentations is to prevent a candidate from gaining unfair advantage by making false statements. At a hearing before Judge Tarbuck on December 18, 1998, Judge Green acknowledged he read the probable cause statement before setting Johnson's bond. He also said that based on the "fairly egregious conduct on the part of the defendant," without something other than the probable cause statement, he "couldn't imagine that I would set a bond at $10,000."

[16] During Judge Kinsey's trial before the Judicial Qualifications Commission hearing panel, JQC attorneys argued Judge Kinsey's criticism of the incumbent's decisions violated the canons. Because criticism implied Judge Kinsey would decide the case differently, the

(Continued on following page)

After seeing how Judge Kinsey's campaign statements were interpreted, would any candidate risk mounting an informative campaign against an incumbent, knowing it would likely result in being subjected to a fine of this magnitude or removal from office?

CONCLUSION

Allowing Florida's Canon 7 to stand as it has been applied in petitioner's case is not only an unconstitutional restriction of judicial candidates' speech, but it will effectively end meaningful judicial elections in Florida. Therefore, she feels it is appropriate that a writ of certiorari be issued to the Florida Supreme Court.

Respectfully submitted,

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JQC contended the criticism constituted a commitment with respect to cases or controversies likely to come before the court in violation of Canon 7A(3)(d)(ii).

APPENDIX A

Supreme Court of Florida

No. SC96629

**INQUIRY CONCERNING A JUDGE,
NO. 99-09
RE: PATRICIA KINSEY.**

[January 30, 2003]

PER CURIAM.

We review the recommendation of the Judicial Qualifications Commission ("JQC") that Judge Patricia Kinsey be disciplined. We have jurisdiction. *See* art. V, § 12, Fla. Const.

CHARGES

This case arose out of charges brought against Judge Kinsey alleging that she engaged in a pattern of improper conduct during the course of her 1998 election campaign for the office of County Court Judge for Escambia County. Formal proceedings were officially instituted against Judge Kinsey on September 9, 1999, when she was initially charged with eleven ethical violations, all based upon conduct occurring during her election campaign. These charges were amended on March 8, 2000, to include an additional allegation which related to a radio advertisement that was aired during the campaign. A hearing was held before the JQC on June 12-13, 2000, at which time the campaign brochures and radio excerpts were the primary evidence used to support the charges. The JQC found Judge Kinsey guilty or guilty in part of nine ethical violations:

CHARGE:

1. During the campaign, in violation of Canon 1, Canon 2A, Canon 3B(5), Canon 7A(3)(a), and Canons 7A(3)(d)(i)-(ii), you distributed a piece of campaign literature entitled, *"Pat Kinsey: The Unanimous Choice of Law Enforcement For County Judge"* in which you stated that "police officers expect judges to take their testimony seriously and to help law enforcement by putting criminals where they belong . . . behind bars," as opposed to simply pledging or promising the faithful and impartial performance of your duties in office. . . .

PANEL FINDING:

1. Guilty as charged.

CHARGE:

2. During the campaign, in violation of Canon 1, Canon 2A, Canon 3B(5), Canon 7A(3)(a), and Canons 7A(3)(d)(i)-(ii), you reiterated your commitment to the prosecution side of criminal cases by distributing a piece of campaign literature entitled, *"If You Are a Criminal, You Probably Won't Want to Read This,"* in which you stated that "police officers expect judges to take their testimony seriously and to help law enforcement by putting criminals where they belong . . . behind bars!,["] as opposed to simply pledging or promising the faithful and impartial performance of your duties in office. . . .

PANEL FINDING:

2. Guilty as charged.

CHARGE:

3. During the campaign, in violation of Canon 1, Canon 2A, Canon 3B(5), Canon 7A(3)(a), and Canons 7A(3)(d)(i)-(ii), you distributed a similar piece of campaign literature entitled, *"Let's Elect 'Pat' Kinsey for County Judge,"* in which you reiterated that "a judge should protect victims' rights," and that judges must support "hard-working law enforcement officers by putting criminals behind bars, not back on our streets," as opposed to simply pledging or promising the faithful and impartial performance of your duties in office. . . . At a minimum, statements of the nature of those identified in paragraphs 1, 2, and 3 erode public confidence in the integrity and impartiality of the judiciary and commit or appear to commit you with respect to issues that may come before the court.

PANEL FINDING:

3. Guilty as charged.

CHARGE:

4. During the campaign, in violation of Canon 1, Canon 2A, Canon 7A(3)(a), and Canons 7A(3)(d)(i)-(ii), you made statements during an interview on a local radio station which exhibited a hostility or apparent hostility towards defendants in criminal cases. By way of example, the following colloquy occurred between you and a caller to the radio show on which you appeared:

> Caller: [M]y question is mainly pertained to Pat Kinsey. Do you believe that as a Judge, you would be able to stand up there, umm, because I do know that *you are pro-law-enforcement,*

> to be able to make a decision without any bias towards the defense or prosecution?
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> * * *
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> Pat Kinsey: *As a prosecutor, I am different from a defense attorney.* I am trained, and I am ethically obliged to look at a case, after an arrest has been made and make a determination, what is just? What is fair? What are the appropriate charges? . . . *This is something that is much different from what a defense attorney does. Much like Bill Green before he went on the bench, he was a defense attorney, that type of attorney. He is trained, and he is ethically obliged at that time to zealously advocate for his client. That is, do whatever he could, under the law, to get his client free. And that is why I think we have such a philosophical difference, between us. I think, in my opinion, that Judge Green is still in that defense mode.* (emphasis added)

As evidenced by the caller's belief that you were "pro-law enforcement" coupled with: your (i) failure to disavow the caller of your apparent bias towards law enforcement; and (ii) attempt to portray the incumbent as "still in that defense-mode," you left the firm and definite impression that, as a judicial officer, you would be in a "prosecution mode" and not rule in an even-handed and impartial manner. . . .

PANEL FINDING:

4. Not guilty as to "failure to disavow" but otherwise guilty as charged.

CHARGE:

5. During the campaign and in violation of Canon 1, Canon 2A, Canon 7A(3)(a), and Canons 7A(3)(d)(i)-(ii), you made the deliberate attempt to cloak your candidacy in an umbrella of law enforcement and portray yourself as a "pro-prosecution/pro-law enforcement judge" by:

> – disseminating a brochure entitled *"Pat Kinsey: The Unanimous Choice of Law Enforcement for County Judge,"* . . . in which you are shown in a group photograph with ten law enforcement officers;
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> – stating in a brochure entitled *"A Vital Message From Law Enforcement,"* . . . that "victims have a right to *expect judges to protect them* by denying bond to potentially dangerous offenders" rather than stating that you would consider bond determinations fairly and impartially based on the circumstances of the particular case (emphasis added);
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> – pledging in a brochure entitled *"The Alternative for County Judge,"* . . . that you would *"bend over backward* to ensure that honest, law-abiding citizens are not victimized a second time by the legal system that is supposed to protect them" (emphasis added);

– highlighting in several of your campaign brochures that you had the "unanimous support of law enforcement" and that "area police officers [had] unanimously endorsed Pat Kinsey for County Judge," thereby further reinforcing your alliance with law enforcement;

– emphasizing in a brochure entitled "*If You Are a Criminal, You Probably Won't Want to Read This,*" . . . that "*Above all else,* Pat Kinsey identifies with the victims of crime," and that "*Pat Kinsey believes a judge should protect the victims of crime,*" rather than simply pledging the faithful and impartial performance of your duties without regard to holding defendants' or victims' interests of paramount importance (emphasis added);

– stating during the aforementioned radio interview referenced in paragraph 4 hereof:

> [you] work[ed] very closely with law enforcement officers as a prosecutor. And they're left begging for help. And all they see when they come to court is a judge, like Bill Green, who either dismisses a case or minimizes it by not holding the criminals accountable. . . . Somebody has to hold these criminals accountable. And that is why I am here.

– further commenting during the same radio interview that:

> I very much take exception to the fact that Mr. Green says he's not a Liberal. He very definitely is. And his record will show that. In fact, I invite you to talk with the law enforcement officers who have endorsed me unanimously. . . . Look to see who they are supporting. Look to see who's [sic] campaign they are contributing to. And I think that will tell the story.

– referring to the defendant as a *"punk"* in your campaign brochure entitled *"A Shocking Story of Judicial Abuse,"* . . . thereby evidencing a certain hostility or bias towards defendants generally.

PANEL FINDING:

5. Guilty as charged of cloaking her entire candidacy in the umbrella of law enforcement and portraying herself as a future pro-prosecution/ pro-law enforcement judge while characterizing her opponent as dismissing criminals and not holding them accountable. The charge contains 8 different examples of similar conduct and these examples represent the basic theme of the entire judicial campaign by Judge Kinsey.

CHARGE:

6. During the campaign, in violation of Canon 1, Canon 2A, Canon 3B(9), Canon 7A(3)(a),

and Canons 7A(3)(d)(i)-(iii), you knowingly misrepresented in your campaign brochure entitled, *"A Vital Message From Law Enforcement,"* the record facts concerning the defendant's appearance before the incumbent for bond consideration in *State v. Alsdorf,* Case No. 98-2993, including the false statement that the defendant had been "released . . . into our community," when, in fact, the defendant had not been released into the community. . . .

PANEL FINDING:

6. Judge Kinsey is found not guilty of this specific charge. The charge is based on JQC Exhibit 4, where Kinsey was accused of "knowingly" making "the false statement that the defendant" (Alsdorf) "had been released into our community. . . . " Although Kinsey is found not guilty of this particular allegation from JQC Exhibit 4, she is found guilty of other charges stemming from the same piece of campaign material.

CHARGE:

7. During the campaign, in violation of Canon 1, Canon 2A, Canon 7A(3)(a), and Canons 7A(3)(d)(i)-(iii), you knowingly misrepresented in your campaign brochure entitled *"A Shocking Story of Judicial Abuse,"* that your opponent, the incumbent, had not revoked Grover Heller's bond at an emergency bond hearing when, in fact, he had revoked the defendant's bond. You further implied that your opponent's role in that case was to protect "an elderly law-abiding couple" and that the incumbent's conduct represented a "shocking lack of compassion for the victims of violent crime."

PANEL FINDING:

7. Guilty in part. The Panel finds guilt on the first part of this charge in that candidate Kinsey made a knowing misrepresentation concerning the bond revocation but not guilty as to the charge of "implying" a shocking lack of compassion for the victims. This charge was based on Exhibit 6, *"A Shocking Story of Judicial Abuse,"* which concerned Judge Green's rulings on the Grover H ller bond.

CHARGE:

8. During the campaign, in violation of Canon 1, Canon 2A, Canon 7A(3)(a), and Canons 7A(3)(d)(i)-(iii), you knowingly misrepresented in a radio advertisement the incumbent's role in the Grover Heller matter by omitting crucial facts relevant to an accurate portrayal of the incumbent's conduct and by giving listeners the false impression that the incumbent took no action to protect an elderly couple from domestic violence. . . .

The radio advertisement stated as follows:

> What kind of man would beat up his own mother? Meet Grover Heller. He was arrested for battery after he grabbed his 63-year-old mother, slammed her against a door and beat her with his fists, sending her to the hospital. Incredibly, County Judge William Green released this thug the very next day. The son then threatens to kill his parents. The frightened couple asked Judge Green to have their son arrested. What did Judge Green do? He offered to put the elderly couple in jail. You heard right.

> Instead of jailing the abusive son, Judge Green offers to put the elderly parents in jail. When asked by reporters, why? [sic] Judge Green said he was testing them to see if they were really afraid. Since when does a law-abiding couple need to be tested by a county judge who is supposed to protect them. Sick of this kind of justice? Then vote no on Judge William Green, Tuesday, September 1st.
>
> Paid political advertisement, paid for and approved by Patricia Kinsey, campaign nonpartisan.

PANEL FINDING:

8. Not guilty. Although the Panel finds Judge Kinsey guilty of other aspects of the Grover Heller matter under charge 7, the Panel concluded this separate charge concerning the same controversy should not be sustained as an additional charge. This was a 60 second radio spot and did not have to contain the full facts of the controversy.

CHARGE:

9. During the campaign, in violation of Canon 1, Canon 2A, Canon 3B(9), Canon 7A(3)(a), and Canons 7A(3)(d)(i)-(iii), in your campaign brochure entitled *"A Vital Message From Law Enforcement,"* you knowingly misrepresented the nature and seriousness of criminal charges which were pending in *State v. Johnson,* Case No. 97-4302, by giving the false and misleading impression that the defendant had been charged with attempted murder and burglary at the time of his appearance for bond consideration when, in

fact, no such charges were pending at the time. Your campaign literature also stated that in a restraining order in the case, the defendant is quoted as having told the victim that he would kill her "just like I buried that bitch in Mississippi," when, in fact, there is no such language in the restraining order. . . .

PANEL FINDING:

9. Guilty of making a knowing misrepresentation as to the seriousness of the criminal charges which were pending in *State v. Johnson.* Not guilty as to the quoted matter attributed to the defendant in the latter part of this charge. This language came from a bond hearing rather than from a restraining order but the Hearing Panel does not find this to have been a knowing misrepresentation.

CHARGE:

10. During the campaign, in violation of Canon 1, Canon 2A, Canon 3B(5), Canon 3B(9), [and] Canon 7A(3)(d)(ii), in your campaign brochure entitled *"A Vital Message From Law Enforcement,"* you publicized the details of the pending cases of two criminal defendants, Stephen Johnson and Gerald Alsdorf, to the public in a manner that could affect the outcome or impair the fairness and integrity of those proceedings. . . .

PANEL FINDING:

10. Guilty as charged.

CHARGE:

11. During the campaign, in violation of Canon 1, Canon 2A, Canon 7A(3)(a), and Canon

7A(3)(d)(iii), in your campaign brochure entitled *"A Vital Message From Law Enforcement,"* you knowingly misrepresented the incumbent as Judge "Let 'em Go" Green, who consistently ignored the pleas of police officers, prosecutors and victims to keep potentially dangerous individuals off the streets. . . .

PANEL FINDING:

11. Not guilty. Although use of "Let 'Em Go Green" was inappropriate in the view of the Hearing Panel, there was unrebutted evidence that this nickname was commonly used by law enforcement members in regard to Judge Green. The Panel also notes that although available, the former Judge Green was not called to testify by the Investigative Panel. There was no evidence offered to rebut Judge Kinsey's assertions of Judge Green's inappropriate conduct in his criminal cases.

CHARGE:

12. Dring the campaign, in violation of Canon 1, Canon 2A, and Canon 7A(3)(a), you engaged in conduct unbecoming a candidate for and lacking the dignity appropriate to judicial office, which had the effect of bringing the judiciary into disrepute, by disseminating the statements set forth in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, and affirmatively conveying the message that it is permissible for judges to rule in a predisposed manner in certain types of matters which may come before them. Such statements inappropriately attack the judicial system by conveying the false and misleading impression that a judge's role is to combat crime rather than judge

those who appear before the court as criminal defendants in a fair and impartial manner. Moreover, by the breadth of your unsubstantial [sic] criticism, you diminished the public perception of the impartiality, independence, and proper responsibility of the judiciary.

PANEL FINDING:

12. Guilty as charged as to Charges 1, 2, 3, 4, 5, 7, 9, and 10. Not guilty as to Charges 6, 8, and 11.

While this Court gives the findings and recommendations of the JQC great weight,[1] "the ultimate power and responsibility in making a determination rests with this Court." *Id.* Accordingly, we review the findings to ensure that there is "clear and convincing evidence" to support the alleged ethical violations – a standard of proof which has been described as "more than a 'preponderance of the evidence,' but the proof need not be 'beyond and to the exclusion of a reasonable doubt.'" *Id.* (quoting *In re LaMotte,* 341 So.2d 513, 516 (Fla. 1977)).

APPLICABLE LAW

As an initial assertion, Judge Kinsey posits that she should not be found guilty of violating Canon 1, Canon 2A, Canon 3B(5), and Canon 3B(9) because Canon 7 is the only canon applicable to the charges. We agree. The Code of Judicial Conduct governs the activities of all members of

[1] *In re Davey,* 645 So. 2d 398, 404 (Fla. 1994) ("The findings and recommendations of the Judicial Qualifications Commission are of persuasive force and should be given great weight.").

the judiciary, even those seeking to become members.[2] Canons 1, 2, and 3, however, are directed only to a judge and hence cannot constitute an independent violation as to a judicial candidate who is not yet a judge.[3] Canon 7, in contrast, clearly states that it is applicable to all candidates who are running for office, whether the candidate is currently an article V judge or not, thus applying the same election rules to both judges and candidates alike. Because all formal charges sustained by the JQC were also premised on alleged violations of Canon 7, which expressly applies to judicial candidates, this claim does not invalidate any of the nine charges that the hearing panel found Judge Kinsey had violated.[4]

First Amendment Challenge

Next, Kinsey asserts that her campaign speech is protected by the First Amendment and relies upon the recent case of *Republican Party of Minnesota v. White,* 122 S. Ct. 2528 (2002). In *White,* Gregory Wersal attempted to run for a judicial position on the Minnesota Supreme Court and disseminated materials which were critical of

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[2] Rule 4-8.2(b) of the Rules Regulating The Florida Bar requires, "A lawyer who is a candidate for judicial office shall comply with the *applicable* provisions of Florida's Code of Judicial Conduct." (Emphasis added.)

[3] The term "judge" is defined by the Code as "Article V, Florida Constitution judges and, where applicable, those persons performing judicial functions under the direction or supervision of an Article V judge." Fla. Code Jud. Conduct, Definitions.

[4] *See also In re Davey,* 645 So. 2d 398, 403 (Fla. 1994) ("This Court has consistently ruled that pre-judicial conduct may be used as a basis for removal or reprimand of a judge.").

prior Minnesota Supreme Court decisions on the issues of crime, welfare, and abortion. Based on this campaign material, Wersal was accused of violating Minnesota's judicial code which prohibited a candidate for judicial office from "announc[ing] his or her views on disputed legal or political issues." Minn.Code of Jud. Conduct, Canon 5(A)(3)(d)(i) (2000).[5] Fearing further repercussions, Wersal withdrew from the election. Two years later, Wersal ran for the same office and attempted to discover whether the Lawyers Board would enforce the "announce clause" and, if so, what was prohibited. Although the Lawyers Board did state that it had constitutional concerns about the clause, it did not answer his questions as to what specifically was prohibited. Wersal then filed suit in federal court, challenging the constitutionality of the clause.

The United States Supreme Court in its review of the announce clause concluded that the clause prohibited "the candidate's mere statement of his current position, even if he does not bind himself to maintain that position after election." *Id.* at 2532. Because the regulations at issue restricted political speech, the Court applied the strict scrutiny test which requires that the canon at issue be "(1) narrowly tailored, to serve (2) a compelling state interest." *Id.* at 2534. The Court noted that in order to show that the clause was narrowly tailored, it must be demonstrated that it does not "unnecessarily circumscrib[e] protected

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[5] This canon was based on Canon 7(B) of the 1972 American Bar Association (ABA) Model Code of Judicial Conduct. In 1990, the ABA modified this canon based on concerns that the 1972 version was worded so broadly that it would violate the constitution. Florida, unlike Minnesota, changed its judicial canons to conform with the 1990 version.

expression." *Id.* at 2535 (quoting *Brown v. Hartlage,* 456 U.S. 45, 54 (1982)). Minnesota contended that its judicial canons were narrowly tailored to serve two compelling state interests: (1) preserving the impartiality of the state judiciary (which protected the due process rights of litigants); and (2) preserving the appearance of the impartiality of the state judiciary (which preserved public confidence in the judiciary). The Court found that Minnesota was rather vague by what it meant by "impartial," however, and found that a judge could still be impartial even though he or she had expressed his or her view on an issue. In its review, the Court noted that a sitting judge would have expressed his opinion on issues, either through prior written decisions or prior experience, but that these preconceived notions did not necessarily affect his impartiality because he would rule in the same manner on the same issue, no matter which litigant raised the issue:

> We think it plain that the announce clause is not narrowly tailored to serve impartiality (or the appearance of impartiality) in this sense. Indeed, the clause is barely tailored to serve that interest *at all,* inasmuch as it does not restrict speech for or against *particular parties,* but rather speech for or against *particular issues.* To be sure, when a case arises that turns on a legal issue on which the judge (as a candidate) had taken a particular stand, the party taking the opposite stand is likely to lose. *But not because of any bias against that party, or favoritism toward the other party. Any* party taking that position is just as likely to lose. The judge is applying the law (as he sees it) evenhandedly.

Id. at 2535-36 (some emphasis added). The Court also emphasized that the "announce clause" was separate and

apart from the "pledges or promises clause," since Minnesota adopted a separate canon which prohibited a candidate from promising or pledging to act in a certain manner while on the bench. Based on these observations, the Court found that Minnesota did not fulfill its burden in showing that the "announce clause" was narrowly tailored, and hence found that the rule violated the First Amendment.

In contrast to *White,* Florida does not have an "announce clause" but instead adopted a more narrow canon, which provides as follows:

> A candidate for judicial office . . . shall not:
>
> (i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; [or]
>
> (ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court. . . .

Fla. Code Jud. Conduct, Canon 7A(3)(d)(i)-(ii). The commentary to the canon stresses the concept that "a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views."[6]

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[6] Some of the statements Judge Kinsey made during her campaign run completely contrary to this commentary. For example, in one radio address, Judge Kinsey declared that it was her responsibility as a judge to be "absolutely a reflection of what the community wants." As is clear from this country's history, there have been numerous times where the popular will of the community ran contrary to the law. In such cases, it

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It is beyond dispute that Canon 7A(3)(d)(i)-(ii) serves a compelling state interest in preserving the integrity of our judiciary and maintaining the public's confidence in an impartial judiciary.[7] A judicial candidate should not be encouraged to believe that the candidate can be elected to office by promising to act in a partisan manner by favoring a discrete group or class of citizens. Likewise, it would be inconsistent with our system of government if a judicial candidate could campaign on a platform that he or she would automatically give more credence to the testimony of certain witnesses or rule in a predetermined manner in a case which was heading to court.

In reviewing the "narrowly tailored" prong of the test, we conclude that the restraints are narrowly tailored to protect the state's compelling interests without unnecessarily prohibiting protected speech. As is clear from the canons and related commentary, a candidate may state his or her personal views, even on disputed issues. However, to ensure that the voters understand a judge's duty to

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is the judge as the impartial decision-maker who will ensure that the law is complied with.

[7] *See In re Code of Jud. Conduct*, 603 So. 2d 494, 497 (Fla. 1992) ("Maintaining the impartiality, the independence from political influence, and the public image of the judiciary as impartial and independent is a compelling governmental interest."); *see also Landmark Communications, Inc., v. Virginia*, 435 U.S. 829, 848 (1978) (Stewart, J., concurring in the judgment) ("There could hardly be a higher governmental interest than a State's interest in the quality of its judiciary."); *Cox v. Louisiana*, 379 U.S. 559, 565 (1965) ("A State may also properly protect the judicial process from being misjudged in the minds of the public."); *Morial v. Judiciary Comm'n*, 565 F.2d 295, 302 (5th Cir. 1977) ("The state's interest in ensuring that judges be and appear to be neither antagonistic nor beholden to any interest, party, or person is entitled to the greatest respect.").

uphold the constitution and laws of the state where the law differs from his or her personal belief, the commentary encourages candidates to stress that as judges, they will uphold the law.

Charges 1, 2, 3, and 5

During Judge Kinsey's judicial campaign, she distributed numerous pamphlets which depicted a very "pro-law enforcement" stance. In charge 1, Kinsey disseminated a brochure which showed a full-page picture of her standing with ten heavily armed police officers and was captioned "Who do these guys count on to back them up?" Within the flyer, she stated, "[Y]our police officers expect judges to take their testimony seriously and to help law enforcement by putting criminals where they belong . . . *behind bars*!"

Charge 2 is based upon another flyer entitled "*If you are a criminal, you probably won't want to read this*!" In this leaflet, she again stressed, "[Y]our police officers expect judges to take their testimony seriously and to help law enforcement by putting criminals where they belong . . . *behind bars*!" The brochure also declared, "Above all else, Pat Kinsey identifies with the victims of crime."

A brochure entitled "*Let's Elect Pat Kinsey*" is the basis behind charge 3. In this leaflet, she informed the voting public that she believes, "We must support our hard-working law enforcement officers by putting criminals behind bars, not back on our streets."

Charge 5, which is drawn from the six brochures and a radio interview, asserts that Judge Kinsey deliberately attempted to cloak her campaign "in an umbrella of law enforcement." In a flyer entitled "*The Alternative for*

County Judge," she stated, "Pat Kinsey will support our valiant law enforcement officers . . . not make their job harder." She also declared in this literature that, "Pat Kinsey will bend over backward to ensure that honest, law-abiding citizens are not victimized a second time by the legal system that is supposed to protect them." This charge also refers to statements in a brochure entitled "*A Vital Message From Law Enforcement*," which declared, "victims have a right to expect judges to protect them by denying bond to potentially dangerous offenders."

During oral argument, Judge Kinsey acknowledged that Canon 7 was violated by her statements that a judge should "help law enforcement by putting criminals where they belong – behind bars" and that she would "bend over backward" to protect victims. She contends, however, that this should be considered protected speech under the First Amendment.

Although some of these charges taken in isolation would not violate the judicial canons, taken together it becomes clear that Judge Kinsey was running on a platform which stressed her allegiance to police officers.[8] Each of the charges addressed above involved implicit pledges that if elected to office, Judge Kinsey would help law enforcement. Through these statements, Judge Kinsey

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[8] Charge 5, for example, also contains other alleged examples of misconduct, such as highlighting that she had the "unanimous support of law enforcement" and was endorsed by both Florida Police Benevolent Association and the Fraternal Order of Police. This type of endorsement may certainly be brought to the attention of the voters and is not prohibited by the judicial canons. However, based on other statements contained in brochures as addressed above, Judge Kinsey went beyond the permissible boundaries.

fostered the distinct impression that she harbored a prosecutor's bias and police officers could expect more favorable treatment from her as she promised to support police officers and help them put criminals behind bars. She also made pledges to victims of crime, promising to bend over backward for them and stressing the point that she identified with them "above all else," thus giving the appearance that she was already committed to according them more favorable treatment than other parties appearing before her. By disseminating materials which promised a different treatment based on the identity of the person appearing before her, it is beyond question that these promises affect her appearance of impartiality and fitness as a judge. While our judicial code does not prohibit a candidate from discussing his or her philosophical beliefs, in the campaign literature at issue Judge Kinsey pledged her support and promised favorable treatment for certain *parties and witnesses* who would be appearing before her (i.e., police and victims of crime). Criminal defendants and criminal defense lawyers could have a genuine concern that they will not be facing a fair and impartial tribunal. We do not find that these types of pledges and statements by a judicial candidate are protected by the First Amendment.

Charge 4

Charge 4 is founded on comments that Judge Kinsey made during a radio interview when a caller asked if she could be able to make a decision without any bias toward the defense or prosecution especially after considering that she appeared to be very "pro-law-enforcement." Judge Kinsey responded:

> As a prosecutor, I am different from a defense attorney. I am trained, and I am ethically obliged to look at a case, after an arrest has been made and make a determination, what is just? What is fair? What are the appropriate charges? . . . This is something that is much different from what a defense attorney does. Much like Bill Green before he went on the bench, he was a defense attorney, that type of attorney. He is trained, and he is ethically obliged at that time to zealously advocate for his client. That is, do whatever he could, under the law, to get his client free. And that is why I think we have such a philosophical difference, between us. I think, in my opinion, that Judge Green is still in that defense mode.

The JQC found that by answering the question in a manner which portrayed herself as a prosecutor and portrayed Judge Green as a defense attorney who was still in a defense mode, Judge Kinsey left the firm and definite impression that as a judge, she would remain in the "prosecution mode." We disagree and find the comments addressed the manner in which Judge Kinsey's background as a prosecutor prepared her for the position of county judge. Such comments by themselves are not per se improper; a candidate is free to discuss his or her background, qualifications for the position, and character and integrity, as well as the background and qualifications of his or her opponent.

During the same interview, however, Judge Kinsey also stated that it was a judge's responsibility to be "absolutely a reflection of what the community wants." We conclude that this statement is directly contrary to Canon 3B(2) of the Code, which states, "A judge shall be faithful to the law and maintain professional competence in it. A

judge shall not be swayed by partisan interests, public clamor, or fear of criticism." Faithful adherence to this canon is necessary to conform to Canon 7A(3)(a), which requires candidates for judicial office to "act in a manner consistent with the integrity and independence of the judiciary." Fla. Code Jud. Conduct, Canon 7A(3)(a).[9] A judicial officer must fulfill his or her obligation to uphold the constitutional and statutory rights of the litigants before the Court, notwithstanding that such decision may be unpopular with the community. This is fundamental to judicial independence. We therefore find that this statement was a violation of Canon 7A(3)(a).

Charge 7

In another piece of campaign literature entitled "*A Shocking Story of Judicial Abuse*," Judge Kinsey misrepresented facts in order to demonstrate that Judge Green had a shocking lack of compassion for victims of crime. The flyer describes an incident where Grover Heller was arrested after being charged with battering his mother. Judge Green released him, and soon afterward, the defendant's parents returned to the judge asserting that the defendant was making threatening phone calls. In bold large letters, the leaflet then stated, "Instead of revoking Grover Heller's bond and putting this abusive punk in jail, Judge William Green offered to put his elderly parents in jail."

[9] In determining whether a judicial candidate has violated his or her oath to "act in a manner consistent with the integrity and independence of the judiciary," this Court may look to Canons 1, 2, and 3 for guidance.

The statements contained in this brochure are clearly intended to send the message that Judge Green did not revoke Grover Heller's bond, when in fact he did. Judge Kinsey asserts that her pamphlet did not make a knowing misrepresentation because the flyer included reprinted newspaper articles which detailed the complete facts of the Heller case. Upon reviewing the pamphlet, it is clear that voters were not meant to read each of the articles: the reprinted articles had very small print and most of the articles were stacked on top of each other so portions of the articles could not be read. More importantly, a voter should not be required to read the fine print in an election campaign flyer to correct a misrepresentation contained in large, bold letters. There is clear and convincing evidence that Judge Kinsey made knowing misrepresentations as to her opponent's actions on the bench in the Heller case.

Charge 9

The JQC found Judge Kinsey guilty of making a knowing misrepresentation as to the nature and seriousness of the criminal charges which were pending in *State v. Johnson,* implying that the defendant had been charged with attempted murder and burglary at the time of his appearance for bond consideration when he had not. This charge relied on a pamphlet entitled *"A Vital Message From Law Enforcement,"* in which Judge Kinsey detailed the facts of several cases where "Judge 'Let 'em Go' Green" released defendants into the community on bond. The first case described in the flyer involved a defendant named Stephen Johnson and stated that he was charged with: "Attempted First Degree Murder, Burglary of a Dwelling with a Battery, Violation of a Restraining Order (Domestic Violence) and False Imprisonment (Kidnaping)." The

brochure described the facts of the case wherein Judge Green released Johnson on bond after he violated a restraining order by kicking down his wife's front door and attempting to strangle her "to the point that he was charged with attempted murder."

The pamphlet leaves the clear impression that Johnson had been charged with attempted murder and burglary at the time he appeared at his bond hearing. Contrary to the implication, Johnson was not charged with these crimes until *after* Judge Green ordered his bond set at $10,000. Judge Kinsey asserts that the flyer does not contain an intentional misrepresentation because the facts of the case would have supported a charge of attempted murder and burglary. We reject this argument as meritless. As Judge Kinsey had already described the facts of the case in detail, she had only one purpose for putting the later charges in the brochure – to embellish her allegations that Judge Green made various decisions of a questionable nature while on the bench. There is sufficient evidence to support the JQC's findings that Judge Kinsey made intentional misrepresentations in this flyer.

Charge 10

Charge 10 alleged that Judge Kinsey violated Canon 1, Canon 2A, Canon 3B(5), Canon 3B(9), and Canon 7A(3)(d)(ii) by making public comments on pending cases which could affect their outcome or impair the fairness and integrity of those proceedings. The brochure, "*A Vital Message From Law Enforcement,*" discussed the facts of three criminal cases, two of which were still pending, and criticized Judge Green's decision to grant bond in each case. The JQC found that Judge Kinsey violated the

applicable canons because her comments could have affected the future outcome of these cases. Judge Kinsey disagreed, asserting that in the subsequent jury selection, no prospective juror knew of the campaign literature so her comments did not affect the outcome.

The JQC's findings seem to be premised on a violation of Canon 3B(9), which prohibits a judge from making any public comment on any pending case where the comments might reasonably be expected to affect its outcome. As noted above, we find Canons 1, 2, and 3 are not applicable to the circumstances and hence we review this claim in light of the remaining applicable canon: Canon 7A(3)(d)(ii), which prohibits a candidate from knowingly making comments that commit or appear to commit the candidate to cases or issues which are likely to come before the court. We find there is not clear and competent evidence to show that Judge Kinsey violated this canon. Although Judge Kinsey commented on two cases still pending, these cases were not likely to come before her if she was elected to the office of county court judge – the two pending cases involved serious felonies which would be heard in circuit court. We are concerned, however, as to whether it is appropriate for a judicial candidate to make public comments on pending cases where such comments could affect their future outcomes and accordingly refer this matter to the Judicial Ethics Advisory Committee for study.

Charge 12

The panel found that based on the violations of the canons as addressed above, Judge Kinsey engaged in conduct unbecoming a candidate for a judicial post and brought the judiciary into disrepute by conveying the false

and misleading impression of the judge's role, particularly in the handling of criminal cases. We agree. Judge Kinsey's campaign materials gave the misleading impression that a judge's role in criminal proceedings is to combat crime and support police officers as opposed to being an impartial tribunal where justice is dispensed without favor or bias.

DISCIPLINE

We next turn to the appropriate sanction for Judge Kinsey's misconduct. The JQC found that Judge Kinsey was guilty of serious violations and that a public reprimand alone was insufficient; accordingly, the JQC recommended that Judge Kinsey be publicly reprimanded and fined in the amount of $50,000 plus the costs of these proceedings. The amount of the fine represented approximately 50% of her yearly salary, or in other words, a six-month suspension without pay (which was the other option that the JQC considered imposing). The JQC explained this decision as follows:

> The Panel finds that Judge Kinsey is guilty of serious violations growing out of her campaign in which she was successful in obtaining the position of county court judge. The Panel has no hesitancy in recommending that she be publicly reprimanded by this Court but believes leaving her in office with no further penalty is entirely inappropriate. Under the current Constitution, Judge Kinsey is subject to removal or further penalty in the form of a fine. The Hearing Panel has thoroughly deliberated this issue and concludes that the penalty imposed here must be sufficient to strongly discourage others from violating the Canons governing contested elections.

At least one member of this Panel strongly urged Judge Kinsey's removal. This Panel member concurs in and would apply the statement of this Court in *Alley* that: "We find it difficult to allow one guilty of such egregious conduct to retain the benefits of these violations and remain in office."

However, the conduct in *Alley* was, in the view of the majority of the Hearing Panel, significantly more egregious than the conduct involved in the present case. Judge Alley admitted to intentionally misrepresenting the basic qualifications of her incumbent opponent and in intentionally misrepresenting her own qualifications. She altered a published newspaper to make it appear she had been endorsed by the paper which had actually endorsed her opponent. She intentionally injected party politics into the nonpartisan race. Judge Kinsey's misconduct did not rise to this level.

Despite the less egregious nature of the violations, Judge Kinsey must be punished for her conduct and such conduct simply cannot be tolerated in future elections. While a reprimand alone is insufficient, there was no evidence that Judge Kinsey is presently unfit to hold office other than her misconduct involved in winning the election. Although such misconduct can rise to the level of present unfitness as is required for removal under Article V, § 12(a)(1), here, the Panel finds the conduct does not warrant removal. Indeed, the Investigative Panel made no direct argument to this Panel that Judge Kinsey should be removed. (T. 45, 570-575). The recommendation of a penalty was left entirely to the Hearing Panel.

> Thus under all of the circumstances including the very favorable character evidence, and after due consideration, the Hearing Panel by a vote of at least 4 members recommends that Judge Kinsey be publicly reprimanded and fined the substantial sum of $50,000.00 plus costs of these proceedings. This amount should be paid within a reasonable time and jurisdiction should be retained by the JQC for purposes of enforcement.

We agree with the JQC that Judge Kinsey is guilty of serious campaign violations that warrant a severe penalty. Accordingly, this Court agrees with the JQC's recommendation as to discipline and finds that a substantial fine is warranted in order to assure the public that justice is dispensed in a fair and unbiased manner and to warn any future judicial candidates that this Court will not tolerate improper campaign statements which imply that, if elected, the judicial candidate will favor one group of citizens over another or will make rulings based upon the sway of popular sentiment in the community.

CONCLUSION

We conclude that there is clear and convincing evidence in support of the JQC's findings of fact that Judge Kinsey violated Canon 7 as alleged in charges 1, 2, 3, 4, 5, 7, 9, and 12. We also agree with the JQC's recommendation as to appropriate discipline of a public reprimand, fine, and the cost of the proceedings. Accordingly, we order that Judge Kinsey pay a fine of $50,000, plus the costs of these proceedings, and remand this case to the JQC for a determination of the amount of such costs. In accordance with the policy announced in *In re Frank,* 753 So. 2d 1228

(Fla. 2000), we also hereby command Judge Patricia Kinsey to appear before this Court for the administration of a public reprimand at a time to be set by the clerk of this Court.

It is so ordered.

ANSTEAD, C.J., PARIENTE, J., and SHAW and HARDING, Senior Justices, concur.

ANSTEAD, C.J., concurs specially with an opinion.

PARIENTE, J., concurs with an opinion.

LEWIS, J., concurs in part and dissents in part with an opinion.

WELLS, J., dissents with an opinion, in which QUINCE, J., concurs.

ANSTEAD, C.J., specially concurring.

While I agree with the majority in upholding the violations of Canon 7 found by the Judicial Qualifications Commission, I find the determination of appropriate discipline to be a more difficult and close issue. Although the majority opinion does not say so explicitly, it is apparent that the majority has found the election campaign abuses demonstrated here to be similar to those found in *In re McMillan,* 797 So. 2d 560 (Fla. 2001).

In addition to the evidence cited by the majority, the testimony that appears most supportive of the majority's decision is that of United States District Court Judge Lacey Collier. Indeed, Judge Collier's testimony is compelling in its condemnation of the campaign tactics involved herein precisely because such tactics misrepresent the proper role of the judiciary and seriously undermine the

public's perception and confidence in a fair, impartial, and independent justice system.

Perhaps most importantly, Judge Collier explained why the campaign's improper claim that judges should be strictly bound to follow the currently prevailing popular will was particularly damaging to the public's understanding of the proper role of our system of justice:

> Q. All right. Judge, if you would refer to page 7 of Exhibit 8. And do you see the statement about halfway down made by Candidate Kinsey that, quote, "It's the same law, but judges are accountable to the community. A judge's responsibility is to make sure," ellipsis, "that it's absolutely the reflection of what the community wants"?
>
> A. Yes, sir.
>
> Q. Judge, do those kind of remarks, in your view, have any effect on the public's perception of the judiciary?
>
> A. That is an absolute misstatement of the role of the judiciary. It is simply not appropriate that a judge reflect what the community wants.
>
> And I think the best example of that is the old concept that a lynch mob is the perfect democracy for everyone except the victim. And that is probably the strongest way of suggesting that this is grossly improper, to make that statement and make that the expectation of the public.
>
> Q. Judge, do [sic] have you any personal views on the propriety of judicial elections?
>
> A. Yes, sir.

Q. And can you share those views with the Commission, please?

A. Well, I don't know how – how much of my feelings you want, but I think the easiest way to get into it is that it is – it is often argued in political circles and discussions, academics and otherwise, that if our founding fathers came back today and drove down the street after landing in their spaceship and saw a sign that says, "Vote for John Jones as county judge," they'd get back on the plane and leave because they would be convinced that they'd made a wrong turn and landed in the wrong country because it didn't resemble anything that they had envisioned when they created what they thought was an independent judiciary.

And elections, it is argued by many thinkers, is simply incompatible with an independent judiciary because it suggests this very thing, that the judicial decisions should be a reflection of the community and what the community wants.

And that's the troubling aspect of elections such as this that we've had in this county and circuit this past time, is that if that becomes the public's expectations – that they're going to dictate to the judges – if that were to continue to its ultimate, then they would be dictating to judges because the judge would have grave concern about any case; in particular, cases of public interest.

And I would suggest that the defendant in those type of cases might be ill-served by that type of attitude forced upon the judiciary by the expectation of the public as suggested here, that

judges and their decisions should be an absolute reflection of what the community wants.

Q. Now, Judge, have any of your opinions and statements here today been affected by your personal views on the propriety of judicial elections?

A. No. I totally and completely support the laws in Florida; suggest that – I think judicial elections, while they might not be in the absolute best interest of the public or the system, but they can be done properly.

We've had elections in and about this county and this circuit that did not seem to be conducted with the same rancor and deception, disgusting performance, that we saw in these elections.

And so my statements are not a condemnation of the system as a whole. I think it can operate if people properly have respect for the system and stay within the bounds of propriety.

While the issue of discipline is close, I am moved by the force of Judge Collier's testimony to join the majority's conclusion.

PARIENTE, J., concurring.

Although this case has produced several different opinions as to the proper discipline to impose, it is important to note that the Court unanimously condemns the conduct of Judge Kinsey during her 1998 election campaign. Because of the view of Justice Wells that this case only calls for a public reprimand, and the view of Justice

Lewis that the conduct of Judge Kinsey during her election campaign is sufficiently egregious to warrant her removal, I write to explain why I agree with the majority's decision to approve the recommendation of the Judicial Qualifications Commission as to discipline.

In Florida, the Code of Judicial Conduct attempts to strike a balance between the need to inform the electorate about the qualifications of judicial candidates and the need for judges to maintain the appearance of impartiality. Indeed, since our Code was amended in 1994 to remove the "pledge and promise" clause – the very clause found to be unconstitutional in *Republican Party of Minnesota v. White*, 122 S. Ct. 2528 (2002) – hundreds of candidates campaigning for judgeships have successfully balanced the competing interests inherent in judicial elections without making statements that impugn their impartiality, cater to a particular group, or make misrepresentations as to their opponents' qualifications and track records.

In the past several years, we have had three notable cases of judicial candidates who stepped over the line during elections: *In re Alley*, 699 So. 2d 1369 (Fla. 1997), *In re McMillan*, 797 So. 2d 560 (Fla. 2001), and now this case. In the case of *In re Alley* there appears no doubt that a sanction greater than a public reprimand would have been imposed but for the fact that *at that time* the constitution prevented the Court from increasing the proposed sanction recommended by the JQC.[10] *See* 699 So. 2d at

[10] *See* art. V, § 12(f), Fla. Const. (1995). Prior to the adoption of the 1996 amendment, the only sanctions available to the Supreme Court against a sitting judge were public reprimand and removal. Also, prior to the 1996 amendment, the Supreme Court could accept, reject, or

(Continued on following page)

1370. In *McMillan,* the respondent not only committed serious violations while campaigning but also, while sitting as a judge, committed additional violations that called into question his continued fitness to hold office. *See* 797 So. 2d at 573.

Justice Lewis makes a strong case as to why Judge Kinsey's conduct was intolerable. He asserts that if the conduct was as egregious as the majority depicts, then removal is the only alternative. He fears that this Court will convey the message that, if willing to pay a fine, a candidate can buy an election.

Admittedly, I have wrestled with the concept of a fine, albeit a substantial one, as the appropriate sanction in this case. However, I have reached the conclusion that we should follow the recommendation of the JQC for three primary reasons.

First, the options now available to this Court to impose sanctions for judicial violations of the Code range from a public reprimand to removal from office. Constitutionally authorized sanctions such as the imposition of a fine and the suspension from office fall between those two extremes. Because the constitution has only recently been amended to allow for the imposition of other sanctions,[11] we have not developed a body of case law as to when a fine, a

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impose a lesser sanction against a judge. However, the Court was not authorized to increase the proposed sanction of a public reprimand. *See In re Alley,* 699 So. 2d at 1370 n. 1.

[11] *See* art. V, § 12(a), Fla. Const. (amended in 1996 to define "discipline" as including "reprimand, fine, suspension with or without pay, and lawyer discipline").

suspension, or a combination of authorized penalties should be imposed. However, a suspension, while symbolically a stronger sanction than a fine, has the unavoidable consequence of also creating a hardship for the judicial system and the citizens of a particular circuit by creating a vacancy in the judiciary for a period of time. Thus, although imposing a fine may not always be an entirely satisfactory method for redressing the harm that has resulted from an election violation, in my view, a fine, coupled with a public reprimand, is appropriate in certain circumstances.[12]

Second, although this Court has the ultimate responsibility under the constitution for the choice of sanction, the JQC is the body that the constitution has created to monitor the conduct of judges. While we have not hesitated to disapprove recommendations that we considered too lenient, most recently in the case of *In re Rodriguez,* 829 So. 2d 857 (Fla. 2002),[13] the recommendations of the JQC as to discipline have persuasive force and should be given great weight. *See In re Miller,* 644 So. 2d 75, 78 (Fla.1994). Indeed, while this Court bears the ultimate responsibility for discipline, in my view a certain amount of deference is appropriate considering the JQC's

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[12] *Cf. Pasquale v. Fla. Elections Comm'n,* 759 So. 2d 23 (Fla. 4th DCA 2000) (affirming fine for failing to report value of a campaign contribution); *Ferre v. State ex rel. Reno,* 478 So. 2d 1077 (Fla. 3d DCA 1985) (affirming $35,000 fine on mayor who accepted improper post-election campaign contributions), *approved,* 494 So. 2d 214 (Fla.1986); *see also* § 106.265, Fla. Stat (2002) (authorizing imposition of fine of up to $1000 for each count of campaign financing violation).

[13] In that case, we rejected the initial JQC recommendation, and subsequently approved a more significant sanction, which included a suspension, a fine, and a public reprimand. *See Rodriguez,* 829 So. 2d at 858-61.

considerable expertise. I thus rely on both the JQC's recommendations and its stated explanation for the recommended sanction:

> The Panel has no hesitancy in recommending that she be publicly reprimanded by this Court but believes leaving her in office with no further penalty is entirely inappropriate. Under the current Constitution, Judge Kinsey is subject to removal or further penalty in the form of a fine. The Hearing Panel has thoroughly deliberated this issue and concludes that the penalty imposed here must be sufficient to strongly discourage others from violating the Canons governing contested elections.
>
> At least one member of this Panel strongly urged Judge Kinsey's removal. This Panel member concurs in and would apply the statement of this Court in *Alley* that: "We find it difficult to allow one guilty of such egregious conduct to retain the benefits of these violations and remain in office."
>
> However, the conduct in *Alley* was, in the view of the majority of the Hearing Panel, significantly more egregious than the conduct involved in the present case. Judge Alley admitted to intentionally misrepresenting the basic qualifications of her incumbent opponent and in intentionally misrepresenting her own qualifications. She altered a published newspaper to make it appear she had been endorsed by the paper which had actually endorsed her opponent. She intentionally injected party politics into the nonpartisan race. Judge Kinsey's misconduct did not rise to this level.

> Despite the less egregious nature of the violations, Judge Kinsey must be punished for her conduct and such conduct simply cannot be tolerated in future elections. While a reprimand alone is insufficient, there was no evidence that Judge Kinsey is presently unfit to hold office other than her misconduct involved in winning the election. Although such misconduct can rise to the level of present unfitness as is required for removal under Article V, § 12(a)(1), here, the Panel finds the conduct does not warrant removal. Indeed, the Investigative Panel made no direct argument to this Panel that Judge Kinsey should be removed. The recommendation of a penalty was left entirely to the Hearing Panel.
>
> Thus under all of the circumstances including the very favorable character evidence, and after due consideration, the Hearing Panel by a vote of at least 4 members recommends that Judge Kinsey be publicly reprimanded and fined the substantial sum of $50,000.00 plus costs of these proceedings.

Finally, and perhaps most importantly to me, Judge Kinsey has now served more than four years since her 1998 election and there has been no suggestion that she has acted other than impartially to all litigants since her election as a judge. In my view, the fact that there has been no suggestion that she has conducted herself in a manner other than in accord with the Code of Judicial Conduct substantially differentiates this case from other cases in which we have removed judges from office.

For example, in *McMillan,* while election conduct charges were pending in this Court, additional charges were filed against Judge McMillan involving actual cases

in which Judge McMillan served as a judge. *See McMillan*, 797 So. 2d at 564.[14] Because Judge Kinsey has, for four years now, apparently conducted herself in a manner befitting an impartial arbiter of the law, I am compelled to concur with the JQC's finding that there is "no evidence that Judge Kinsey is presently unfit to hold office," and to support the JQC's recommendation as to the appropriate discipline.

Based on these considerations I conclude that the substantial fine and public reprimand do not soil the judiciary, but rather serve as a forceful warning that the tactics in which Judge Kinsey deliberately engaged during the election will *not* be tolerated by this Court. I do hope that Judge Kinsey, the public, and future judicial candidates receive the correct message – not that justice is for sale or that the ends justify the means, but that to engage in this type of campaign tactic imperils the very foundation of our justice system.

LEWIS, J., concurring in part and dissenting in part.

While I concur in the decision of the majority approving the Commission's finding a violation of Canon 7 of the Code of Judicial Conduct by Judge Kinsey, I cannot agree with a number of points within the majority opinion. My consideration of the Code leads me to conclude that the conduct presented here is in violation of the principles

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[14] *See also In re Graziano*, 696 So.2d 744 (Fla. 1997) (affirming JQC's recommendation that Judge Graziano be removed from office for actions that constituted "rank misuse of respondent's judicial office").

outlined in Canons 1, 2, 3, and 7, and this, along with a $50,000 fine, soils the judicial position to the extent that removal is the only reasonable alternative. In my view, one of the most important factors is that the conduct this Court considers today was not simply the product of an isolated instance of indiscretion, a momentary lapse of judgment, or the exposure of human frailty from which we all suffer from time to time. The conduct here was repeated, intentional, direct action with a designed purpose which cast aspersions and doubt onto the heart of the judicial system and the elected judicial office sought by Judge Kinsey. The proper discipline for this type of conscious, purposeful behavior directed to the judicial office is removal, and I dissent.

I fear that the majority opinion reflects an attempt to "split the baby" in determining that the conduct analyzed is not protected speech, yet the appropriate discipline is to be a reprimand and an enormous fine. In my view, the conduct here is either protected speech deserving no discipline, or egregious non-protected conduct and promises of future conduct deserving of removal from the bench. I thus regard the opinion voiced by Justice Wells in his dissent as certainly an arguable perspective, but I must respectfully disagree.

Conduct

First, I cannot agree with the majority's conclusion that Canons 1, 2, and 3 are totally inapplicable during the candidacy of judges. The preamble to the Code of Judicial Conduct reads: "The Code is designed to provide guidance to judges *and candidates for judicial office* and to provide a structure for regulating conduct through disciplinary

agencies." Fla. Code Jud. Conduct, Preamble (emphasis supplied). Further, as expressly noted by the majority, *see* majority op. at 13 n.4., but inexplicably ignored, "This Court has consistently ruled that pre-judicial conduct may be used as a basis for removal or reprimand of a judge." *In re Davey,* 645 So. 2d 398, 403 (Fla. 1994). Although Judge Davey had been elected at the time the misconduct occurred, he was not a sitting Article V judge. Canon 1 and Canon 2 were determined to be applicable under such circumstances, and the same reasoning should apply here. Indeed, the Judicial Qualifications Commission "has constitutional authority to investigate pre-judicial acts and recommend to this Court the removal (for unfitness) or reprimand (for misconduct) of a sitting judge." *Id.*

The Code of Judicial Conduct expressly provides that "[t]he Canons and Sections are rules of reason." Fla. Code Jud. Conduct, Preamble. Therefore, the interests underlying the Canons themselves must be considered in connection with the issue of whether they apply to candidates for judicial office as well as sitting judges. "[J]udges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system." *Id.* This principle is no less applicable to judicial candidates than current judges; indeed, because judicial elections may represent one of the few times in which the general public directly scrutinizes the behavior of judges and judicial candidates, the entirety of the standards enunciated in the Code must be followed by both groups. We cannot have, and it is totally unworkable and illogical to have, different and multiple standards applicable to candidates for the same judicial position.

Additionally, I read the text of Canon 7(A)(3)(a) as requiring judicial candidates to conduct themselves in accordance with the entirety of the Code. Specifically, Canon 7 states: "A candidate for judicial office . . . shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary. . . . " Fla. Code Jud. Conduct, Canon 7(A)(3)(a). Clearly, this provision mandates that a candidate for the bench must comply with the same standards as sitting judges. The principles embodied in Canons 1, 2, and 3 are incorporated into Canon 7, and cannot be simply ignored. Therefore, I dissent from that portion of the majority opinion which does precisely that.

I must also dissent from that part of the majority's conclusion which addresses Charge 4. Having repeatedly reviewed the comments expressed during this radio interview, I must conclude that Judge Kinsey's discussion with the caller had absolutely nothing whatsoever to do with her background or qualifications or those of her opponent, Judge Green. Further, her comments did not relate to character or integrity in any fashion. Her publicly broadcasted commentary was nothing less than an attack upon any and all attorneys who had at any time in their pasts represented a criminal defendant, and was specifically aimed at Judge Green. She portrayed herself as a prosecutor who would continue to prosecute – even though she was seeking election to an office which demands nothing less than complete neutrality. *See In re McMillan,* 797 So. 2d 560, 571 (Fla. 2001) ("This Court has declared from time immemorial that the lack of bias and partiality is an essential prerequisite to service as a judicial officer."). The campaign tactic here, as demonstrated by Judge Kinsey's comments during this radio interview, was

nothing other than a "law and order" campaign designed to inflame public opinion and pander to principles totally contrary to a fair and impartial application of the law by a neutral arbiter in the judicial system. In my view, Judge Kinsey's statements during this radio interview violated Canons 1, 2, 3, and 7 of the Code of Judicial Conduct, and constituted a specific pledge and promise of inappropriate conduct in judicial office.

Discipline

As noted above, I concur in the portion of the majority decision concluding that Judge Kinsey's statements and conduct constitute pledges and promises of conduct in judicial office not qualified as protected speech under the decision of the United States Supreme Court in *Republican Party of Minnesota v. White*, 122 S. Ct. 2528 (2002). However, because "[t]he Code of Judicial Conduct is clear and unambiguous as to its proscription against both judges and judicial candidates making 'pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office,'" *McMillan*, 797 So. 2d at 566, the only rational conclusion would be the removal of Judge Kinsey from the position secured through inappropriate pledges and promises, among the other violations.

In my view, the imposition of this fine, the amount of which is clearly designed and intended to represent the enormity of the reprehensible behavior, sends the message to future candidates that they may violate the Code and commit ethical breaches, if they are prepared to pay a monetary fine following the election. The kinds of promises and type of condemnable campaign behavior demonstrated

here tarnishes the very purpose for which the judiciary was established – to fairly and impartially consider any and all matters, without preconceived notions or positions about the merits of each case. Judges should not pledge to be prosecutors or defense attorneys; they should pledge to administer the law neutrally and justly. In the final analysis, the essential question here is whether the parent of a child who has been wrongly accused of a crime could walk into a courtroom and look to Judge Kinsey with confidence that his or her child would be fairly treated and given justice in her courtroom. After hearing Judge Kinsey's radio interview, and reading the campaign literature at issue, the clear answer is no. I conclude that if the actions are so reprehensible that the majority believes the imposition of a $50,000 fine is justified, those actions must certainly justify removal from the office so tainted. Selecting an enormous fine as discipline only sends the message that "anything goes" in judicial elections if a candidate has the financial ability to pay the monetary consequences. Indeed, in this era in which many judicial candidates in Florida are able to produce significant campaign funds from donations or personal assets, there may come a day when candidates simply maintain monetary reserves to pay fines following the election and then only the economically powerful can successfully compete in the election process.

I fear that the majority attempts to walk a fine, if not illusory, line by determining that the United States Supreme Court's decision in *White* does not protect Judge Kinsey's statements, yet approving an enormous monetary fine and reprimand as discipline. The issue is quite clear to me: either this Court should dismiss the charges of misconduct on the authority of *White,* or the judicial office

is so tainted that a removal from office is the only rational result. I believe the campaign actions of Judge Kinsey are quite similar to the behavior relating to the credibility of law enforcement witnesses described and condemned by the Second District Court of Appeal as "a flagrant violation of . . . the Code of Judicial Conduct" in *Dougherty v. State,* 746 So. 2d 486, 488 (Fla. 2d DCA 1999). "[T]o allow someone who has committed such misconduct during a campaign to attain office to then serve the term of judgeship obtained by such means clearly sends the wrong message to future candidates; that is, the end justifies the means and, thus, all is fair so long as the candidate wins." *McMillan,* 797 So. 2d at 573.

Based upon the foregoing, I respectfully dissent from the majority's conclusions regarding the discipline in this case. I would conclude that clear and convincing evidence exists in support of the JQC's determinations that Judge Kinsey violated Canons 1, 2, 3, and 7. Further, if the payment of a $50,000 fine is appropriate and necessary, it so taints the judicial office that removal is the only alternative.

WELLS, J., dissenting.

I dissent from the majority's decision. I would approve only the recommendation that Judge Kinsey was guilty of material misrepresentations in charges 7 and 9. For that, I believe the appropriate sanction would be a public reprimand.

My reason for dissenting as to the acceptance of the other charges is that I believe that the JQC's findings of guilt in respect to those charges are in direct conflict with

the decision of the United States Supreme Court in *Republican Party of Minnesota v. White*, 122 S. Ct. 2528 (2002). While I agree with this Court's majority that the Court in *White* did not declare our Code's "pledge or promise" clause unconstitutional, I cannot read the charges for which the JQC found Judge Kinsey guilty in charges 1, 2, 3, 4, 5, and 12 as being other than charges based upon Judge Kinsey announcing her position on these matters. The guilty findings run directly contrary to the United States Supreme Court decision by which we are bound.

QUINCE, J., concurs.

Original Proceeding – Florida Judicial Qualifications Commission

The Honorable Harvey L. Goldstein, Chairman, Hearing Panel, Florida Judicial Qualifications Commission, Tallahassee, Florida, and John R. Beranek, Counsel to the Hearing Panel, Tallahassee, Florida; Thomas C. MacDonald, Jr., General Counsel, Florida Judicial Qualifications Commission, Tampa, Florida; Marvin E. Barkin and Michael K. Green of Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis, Special Counsel, Tampa, Florida, and Lansing C. Scriven, Co-Special Counsel, Tampa Florida,

for Petitioner

Roy M. Kinsey, Troxel, Johnson & Walborsky, Pensacola, Florida,

for Judge Patricia A. Kinsey, Respondent

APPENDIX B

BEFORE THE JUDICIAL
QUALIFICATIONS COMMISSION
STATE OF FLORIDA
CASE NO.: 99-09

INQUIRY CONCERNING
JUDGE PATRICIA KINSEY, /

SUPREME COURT CASE
NO. 96,629

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS BY THE HEARING PANEL OF THE JUDICIAL QUALIFICATIONS COMMISSION

The Hearing Panel of the Florida Judicial Qualifications Commission ("JQC") respectfully submits the following Findings, Conclusions and Recommendations pursuant to Article 5, § 12(a)(1), (b) and (c) of the Florida Constitution.

Judge Patricia Kinsey, a County Judge of Escambia County, Florida was charged by the Investigative Panel of the JQC with certain violations of the Code of Judicial Conduct growing out of her election to the bench in the course of the 1998 election campaign in which she defeated the incumbent County Judge William Green.

Generally it was charged[1] that candidate Kinsey engaged in an improper pattern of conduct by making pledges and promises of conduct in office which would favor law enforcement while at the same time asserting

[1] The Formal Charges are quoted in full in these Findings, Conclusions and Recommendations.

that the incumbent judge consistently ruled against law enforcement. It was also asserted that her statements committed her to a predisposition favoring victims and law enforcement and further that she made knowingly, false and misleading representations concerning her opponent whom she criticized as "Let 'Em Go Green." It was further asserted that she made comments regarding pending cases before Judge Green which might affect the outcome of those cases. It was asserted that her campaign materials intentionally lead [sic] the voters to believe that, as a judge, Patricia Kinsey would assist the police in placing criminals in jail while her opponent, Judge Green, routinely set them free.

The charges, alleging violations of Canons 1, 2, 3, and 7 were tried before the Hearing Panel which received testimony and documentary evidence in Pensacola, Florida on June 12 and 13, 2000. The Hearing Panel consisted of County Judge Harvey Goldstein and District Court of Appeal Judge James Jorgenson, attorneys Evett Simmons and John Frost, and lay members, Bonnie Booth and Nancy Mahon. Attorney John Beranek was counsel to the Hearing Panel. The Investigative/Prosecutorial Panel of the JQC was represented by attorneys Marvin Barkin, Lance Scriven and Tom MacDonald. Judge Patricia Kinsey was represented by her counsel, Mr. Roy Kinsey, who is also her husband. (T. 75).

The Amended Notice of Formal Charges of March 3, 2000, asserts 12 charges which are here quoted followed by the Hearing Panel's findings as to each. The findings indicated below were each determined by at least a two-thirds vote of the six member Hearing Panel in accordance with Article 5 § 12(b) of the Florida Constitution and Rule 19 of the Judicial Qualifications Commission Rules. In the

view of the Hearing Panel, each of these findings is supported by clear and convincing evidence in accordance with *In re: Graziano*, 696 So. 2d 744, 753 (Fla. 1997); *In re: Davey*, 645 So. 2d 398, 404 (Fla. 1994); and *In re: Ford-Kaus*, 730 So. 2d 269 (Fla. 1999).

The charges and Panel findings are as follows:

CHARGE:

1. During the campaign, in violation of Canon 1, Canon 2(A), Canon 3(b)(5), Canon 7(A)(3)(a), and Canons 7(A)(3)(d)(i)-(ii), you distributed a piece of campaign literature entitled, *"Pat Kinsey: The Unanimous Choice of Law Enforcement For County Judge"* in which you stated that "police officers expect judges to take their testimony seriously and to help law enforcement by putting criminals where they belong . . . behind bars," as opposed to simply pledging or promising the faithful and impartial performance of your duties in office. A true and correct copy of this campaign literature is attached hereto as Exhibit A. (Designated as JQC Exhibit 1 at the hearing).

PANEL FINDING:

1. Guilty as charged.

CHARGE:

2. During the campaign, in violation of Canon 1, Canon 2(A), Canon 3(b)(5), Canon 7(A)(3)(a), and Canons 7(A)(3)(d)(i)-(ii), you reiterated your commitment to the prosecution side of criminal cases by distributing a piece of campaign literature entitled, *"If You Are a Criminal, You Probably Won't Want to Read This,"* in which you stated that "police officers expect judges to take their testimony seriously and to help law enforcement by putting criminals where they belong . . . behind bars!, as opposed to simply

pledging or promising the faithful and impartial performance of your duties in office. A true and correct copy of this campaign literature is attached hereto as Exhibit B. (Designated as JQC Exhibit 2 at the hearing).

PANEL FINDING:

2. Guilty as charged.

CHARGE:

3. During the campaign, in violation of Canon 1, Canon 2(A), Canon 3(b)(5), Canon 7(A)(3)(a), and Canons 7(A)(3)(d)(i)-(ii), you distributed a similar piece of campaign literature entitled, *"Let's Elect 'Pat' Kinsey for County Judge,"* in which you reiterated that "a judge should protect victims' rights," and that judges must support "hard-working law enforcement officers by putting criminals behind bars, not back on our streets," as opposed to simply pledging or promising the faithful and impartial performance of your duties in office. A true and correct copy of this campaign literature is attached hereto as Exhibit C. (Designated as JQC Exhibit 3 at the hearing). At a minimum, statements of the nature of those identified in paragraphs 1, 2, and 3 erode public confidence in the integrity and impartiality of the judiciary and commit or appear to commit you with respect to issues that may come before the court.

PANEL FINDING:

3. Guilty as charged.

CHARGE:

4. During the campaign, in violation of Canon 1, Canon 2(a), Canon 7(A)(3)(a) and Canons 7(A)(3)(d)(i)-(ii), you made statements during an interview on a local radio station which exhibited a hostility or apparent hostility towards defendants in criminal cases. By way of example,

the following colloquy occurred between you and a caller to the radio show on which you appeared:

> Caller: [M]y question is mainly pertained to Pat Kinsey. Do you believe that as a Judge, you would be able to stand up there, uum, because I do know that **you are pro-law enforcement**, to be able to make a decision without any bias towards the defense or prosecution?
>
> * * *
>
> Pat Kinsey: **As a prosecutor, I am different from a defense attorney.** I am trained, and I am ethically obliged to look at a case, after an arrest has been made and make a determination, what is just? What is fair? What are the appropriate charges? . . . **This is something that is much different from what a defense attorney does. Much like Bill Green before he went on the bench, he was a defense attorney, that type of attorney. He is trained, and he is with** [sic] **ethically obliged at that time to zealously advocate for his client. That is, do whatever he could, under the law, to get his client free. And that is why I think we have such a philosophical difference, between us. I think, in my opinion, that Judge Green is still in that defense mode.** (emphasis added)

As evidenced by the caller's belief that you were "pro-law enforcement" coupled with: your i) failure to disavow the caller of your apparent bias towards law enforcement and; ii) attempt to portray the incumbent as "still in that defense-mode," you left the firm and definite impression that, as a judicial officer, you would be in a "prosecution mode" and not rule in an even-handed and impartial manner. A copy of a transcript from this radio interview is

attached hereto as Exhibit D. (Designated as JQC Exhibit 8 at the hearing).

PANEL FINDING:

4. Not guilty as to "failure to disavow" but otherwise guilty as charged.

CHARGE:

5. During the campaign and in violation of Canon 1, Canon 2(a), Canon 7(A)(3)(a) and Canon 7(A)(3)(d)(i)-(ii), you made the deliberate attempt to cloak your candidacy in an umbrella of law enforcement and portray yourself as a "pro-prosecution/pro-law enforcement judge" by:

– disseminating a brochure entitled *"Pat Kinsey: The Unanimous Choice of Law Enforcement for County Judge,"* a copy of which is attached hereto as Exhibit A, in which you are shown in a group photograph with ten law enforcement officers;

– stating in a brochure entitled, *"A Vital Message From Law Enforcement,"* a copy of which is attached hereto as Exhibit E, that "victims have a right to **expect judges to protect them** by denying bond to potentially dangerous offenders" rather than stating that you would consider bond determinations fairly and impartially based on the circumstances of the particular case (emphasis added);

– pledging in a brochure entitled *"The Alternative for County Judge,"* a copy of which is attached hereto as Exhibit F, that you would "**bend over backward** to ensure that honest, law-abiding citizens are not victimized a second time by the legal system that is supposed to protect them" (emphasis added);

– highlighting in several of your campaign brochures, that you had the "unanimous support of law enforcement" and that "area police officers [had] unanimously endorsed Pat Kinsey for County Judge," thereby further reinforcing your alliance with law enforcement;

– emphasizing in a brochure entitled *"If You Are a Criminal, You Probably Won't Want to Read This,"* a copy of which is attached hereto as Exhibit B, that "**Above all else**, Pat Kinsey identifies with the victims of crime," and that "**Pat Kinsey believes a judge should protect the victims of crime,**" rather than simply pledging the faithful and impartial performance of your duties without regard to holding defendants' or victims' interests of paramount importance (emphasis added);

– stating during the aforementioned radio interview referenced in paragraph 4 hereof:

> [you] work[ed] very closely with law enforcement officers as a prosecutor. And they're left begging for help. And all they see when they come to court is a Judge, like Bill Green, who either dismisses a case or minimizes it by not holding the criminals accountable . . . Somebody has to hold these crimes accountable. And that is why I am here.

– further commenting during the same radio interview that:

> I very much take exception to the fact that Mr. Green says he's not a Liberal. He very definitely is. And his record will show that. In fact, I invite you to talk with the law enforcement officers

> who have endorsed me unanimously . . . Look to see who they are supporting. Look to see who's[sic] campaign they are contributing to. And I think that will tell the story.

– referring to the defendant as a "**punk**" in your campaign brochure entitled *"A Shocking Story of Judicial Abuse,"* a copy of which is attached hereto as Exhibit G, thereby evidencing a certain hostility or bias towards defendants generally.

PANEL FINDING:

5. Guilty as charged of cloaking her entire candidacy in the umbrella of law enforcement and portraying herself as a future pro-prosecution/pro-law enforcement judge while characterizing her opponent as dismissing criminals and not holding them accountable. The charge contains 8 different examples of similar conduct and these examples represent the basic theme of the entire judicial campaign by Judge Kinsey. (T. 87, 88, 92, 100, 101, 151, 373, 379).

CHARGE:

6. During the campaign, in violation of Canon 1, Canon 2(A), Canon 3(b)(9), Canon 7(A)(3)(a) and Canons 7(A)(3)(d)(i)-(iii), you knowingly misrepresented in your campaign brochure entitled, *"A Vital Message From Law Enforcement,"* the record facts concerning the defendant's appearance before the incumbent for bond consideration in *State v. Alsdorf*, Case No. 98-2993, including the false statement that the defendant had been "released . . . into our community," when, in fact, the defendant had not been released into the community. A true and correct copy of this campaign literature reflecting this false statement is attached hereto as Exhibit E. (Designated as JQC Exhibit 4 at the hearing).

PANEL FINDING:

6. Judge Kinsey is found not guilty of this specific charge. The charge is based on JQC Exhibit 4, where Kinsey was accused of "knowingly" making "the false statement that the defendant" (Alsdorf) "had been released into our community . . . " Although Kinsey is found not guilty of this particular allegation from JQC Exhibit 4, she is found guilty of other charges stemming from the same piece of campaign material.

CHARGE:

7. During the campaign, in violation of Canon 1, Canon 2(A), Canon 7(A)(3)(a), and Canons 7(A)(3)(d)(i)-(iii), you knowingly misrepresented in your campaign brochure entitled, *"A Shocking Story of Judicial Abuse,"* that your opponent, the incumbent, had not revoked Grover Heller's bond at an emergency bond hearing when, in fact, he had revoked the defendant's bond. You further implied that your opponent's role in that case was to protect "an elderly law-abiding couple" and that the incumbent's conduct represented a "shocking lack of compassion for the victims of violent crime." A true and correct copy of this campaign literature is attached hereto as Exhibit G. (Designated as JQC Exhibit 5 at the hearing).

PANEL FINDING:

7. Guilty in part. The Panel finds guilt on the first part of this charge in that candidate Kinsey made a knowing misrepresentation concerning the bond revocation but not guilty as to the charge of "implying" a shocking lack of compassion for the victims. This charge was based on Exhibit 6 *"A Shocking Story of Judicial Abuse"* which concerned Judge Green's rulings on the Grover Heller bond.

CHARGE:

8. During the campaign, in violation of Canon 1, Canon 2(A), Canon 7(A)(3)(a), and Canons 7(A)(3)(d)(i)-(iii), you knowingly misrepresented in a radio advertisement the incumbent's role in the Grover Heller matter by omitting crucial facts relevant to an accurate portrayal of the incumbent's conduct and by giving listeners the false impression that the incumbent took no action to protect an elderly couple from domestic violence. (The tape was played during the hearing and a placard showing the text was exhibited and is a part of the record).

The radio advertisement stated as follows:

> What kind of man would beat up his own mother? Meet Grover Heller. He was arrested for battery after he grabbed his 63-year-old mother, slammed her against a door and beat her with his fists, sending her to the hospital. Incredibly, County Judge William Green released this thug the very next day. The son then threatens to kill his parents. The frightened couple asked Judge Green to have their son arrested. What did Judge Green do? He offered to put the elderly couple in jail. You heard right.
>
> Instead of jailing the abusive son, Judge Green offers to put the elderly parents in jail. When asked by reporters, why? Judge Green said he was testing them to see if they were really afraid. Since when does a law abiding couple need to be tested by a county judge who is supposed to protect them. Sick of this kind of justice? Then vote no on Judge William Green, Tuesday, September 1st.
>
> Paid political advertisement, paid for and approved by Patricia Kinsey campaign nonpartisan.

PANEL FINDING:

8. Not guilty. Although the Panel finds Judge Kinsey guilty of other aspects of the Grover Heller matter under charge 7, the Panel concluded this separate charge concerning the same controversy should not be sustained as an additional charge. This was a 60 second radio spot and did not have to contain the full facts of the controversy.

CHARGE:

9. During the campaign, in violation of Canon 1, Canon 2(A), Canon 3(b)(9), Canon 7(A)(3)(a) and Canons 7(A)(3)(d)(i)-(iii), in your campaign brochure entitled, *"A Vital Message From Law Enforcement,"* you knowingly misrepresented the nature and seriousness of criminal charges which were pending in *State v. Johnson*, Case No. 97-4302, by giving the false and misleading impression that the defendant had been charged with attempted murder and burglary at the time of his appearance for bond consideration when, in fact, no such charges were pending at the time. Your campaign literature also stated that in a restraining order in the case, the defendant is quoted as having told the victim, that he would kill her "just like I buried that bitch in Mississippi," when, in fact, there is no such language in the restraining order. A true and correct copy of this campaign literature is attached hereto as Exhibit E.

PANEL FINDING:

9. Guilty of making a knowing misrepresentation as to the seriousness of the criminal charges which were pending in *State v. Johnson*. Not guilty as to the quoted matter attributed to the defendant in the later part of this charge. This language came from a bond hearing rather than from a restraining order but the Hearing Panel does not find this to have been a knowing misrepresentation.

CHARGE

10. During the campaign, in violation of Canon 1, Canon 2(a), Canon 3(b)(5), Canon 3(b)(9), Canon 7(A)(3)(d)(ii), in your campaign brochure entitled, *"A Vital Message From Law Enforcement,"* you publicized the details of the pending cases of two criminal defendants, Stephen Johnson and Gerard Alsdorf, to the public in a manner that could affect the outcome or impair the fairness and integrity of those proceedings. A true and correct copy of this campaign literature is attached hereto as Exhibit E.

PANEL FINDING:

10. Guilty as charged.

CHARGE:

11. During the campaign, in violation of Canon 1, Canon 2(a), Canon 7(A)(3)(a) and Canon 7(A)(3)(d)(iii), in your campaign brochure entitled, *"A vital Message From Law Enforcement,"* you knowingly misrepresented the incumbent as Judge "Let 'em Go" Green, who consistently ignored the pleas of police officers, prosecutors and victims to keep potentially dangerous individuals off the streets. A true and correct copy of this campaign literature is attached hereto as Exhibit E.

PANEL FINDING:

11. Not guilty. Although use of "Let 'Em Go Green" was inappropriate in the view of the Hearing Panel, there was unrebutted evidence that this nickname was commonly used by law enforcement members in regard to Judge Green. (T. 102-4, 373, 397, 444). The Panel also notes that although available, the former Judge Green was not called to testify by the Investigative Panel. There was

no evidence offered to rebut Judge Kinsey's assertions of Judge Green's inappropriate conduct in his criminal cases.

CHARGE:

12. During the campaign, in violation of Canon 1, Canon 2(A) and Canon 7(A)(3)(a), you engaged in conduct unbecoming a candidate for and lacking the dignity appropriate to judicial office, which had the effect of bringing the judiciary into disrepute, by disseminating the statements set forth in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, and affirmatively conveying the message that it is permissible for judges to rule in a predisposed manner in certain types of matters which may come before them. Such statements inappropriately attack the judicial system by conveying the false and misleading impression that a judge's role is to combat crime rather than judge those who appear before the court as criminal defendants in a fair and impartial manner. Moreover, by the breadth of your unsubstantial criticism, you diminished the public perception of the impartiality, independence and proper responsibility of the judiciary.

PANEL FINDING:

12. Guilty as charged as to Charges 1, 2, 3, 4, 5, 7, 9 and 10. Not guilty as to Charges 6, 8 and 11.

FINDINGS OF FACT
OVERVIEW

The following factual findings provide an overview of the case and the sequence of events leading to these proceedings. More specific findings as to the individual charges and the legal and ethical issues follow this overview.

The evidence presented was rarely in conflict and the basic facts were agreed upon including the campaign literature and the radio excerpts which were all exhibits to the charges. These exhibits which became the primary evidence were all stipulated into evidence. (T. 77). The prosecution's case consisted of two witnesses, Judge Patricia Kinsey (T. 72) and Judge Lacey Collier, a former Circuit Judge and current Federal District Judge. (T. 173).

Judge Kinsey generally testified that she presented herself as favoring law enforcement because that became the issue in the race due to Judge Green's job performance which was generally condemned by law enforcement. (T. 84, 87, 88, 92, 100, 101, 151). There was no disagreement by Judge Kinsey that she was responsible for all the campaign material. (T. 77). Judge Kinsey's position was that she was not bound by all the Canons governing judges because she was merely a candidate and further that her campaign constituted free political speech which was constitutionally protected under the First Amendment. (T. 18-21, 104, 131-2, 168). She believed that none of her materials violated any applicable Canon.

Judge Collier testified, without objection, that in his view the Kinsey campaign's extreme pro-law enforcement position was improper and unethical. (T. 176-184). He gave his opinion that the judiciary was to be independent and not to merely reflect the desires of the community. (T. 185-6).

Judge Kinsey presented 15 witnesses and over 200 affidavits attesting to her good character and skills as a sitting judge. This case does not concern any charge of or any evidence of misconduct by Judge Kinsey after her election to the bench. Judge Kinsey and her counsel

argued and asserted that Canon 1 does not apply to judicial candidates and that various aspects of other Canons have no application to candidates. The Hearing Panel rejected this position at trial and herein finds violations of all of the charged Canons, including Canons 1, 2, 3, and 7. (T. 371).

Judge Patricia Kinsey graduated from law school in 1991 and presented herself as an intelligent individual and as having been, a competent assistant state attorney. She is married to an attorney, Roy Kinsey, who represented her at the hearing of this matter. (T. 75, 141). Upon graduation from law school she joined the State Attorney's Office in Pensacola. (T. 139). She decided very early that she wished to run for the County Court bench. (T. 126, 140).

Due to a perceived basic philosophical difference with Judge William Green's approach to criminal matters, she chose to run against him. (T. 140, 148). An example of this philosophical disagreement was described by Judge Kinsey. (T. 147-8). As an assistant state attorney Kinsey believed she lost her cases too often before Judge Green. She discussed this with him and he assured her she was properly trying her cases. He also reportedly stated that if faced with only the testimony of a defendant and the testimony of a police officer "and that's all the evidence I have, I'm going with the defendant every time." (T. 148). Attorney Kinsey believed this was unfair to the police. Other assistant state attorneys testified to similar statements by Judge Green. (T. 311).

Patricia Kinsey was respected by the law enforcement community when she functioned as a prosecutor and many officers held Judge Green in low esteem. (T. 311, 373). The

name "Let 'Em Go Green" was in common usage by the police. (T. 397). Police officers occasionally suggested that a case be nol prossed rather than go to court if the matter was assigned to Judge Green. (T. 63, 302-3). The law enforcement community perceived Patricia Kinsey as a likely candidate to run against Judge Green and the evidence was very strong that Patricia Kinsey was thought to be pro-police and very much in favor of the victims of crime. (T. 373-4, 386-390).

The campaign was managed by Mr. Roy Kinsey who's [sic] office staff assisted. Most of the day to day supervision and the designing of the campaign materials was done by political consultant Mr. James Spearing of Tallahassee. (T. 372-3). Mr. Spearing had been in the business of running political campaigns for some 13 years and one of his major clients was the Police Benevolent Association which contacted Mr. Spearing to assist Patricia Kinsey in her campaign. (T. 373). He indicated that numerous law enforcement officers were complaining to him about how Judge Green handled criminal matters in his court. Although Mr. Spearing had never before handled a judicial campaign, he educated himself on the differences between a judicial campaign and a normal political campaign. (T. 375-6). There were briefings between Spearing, the candidate and Roy Kinsey in which they discussed the restrictions on judicial campaigns. (T. 375-6).

Mr. Spearing indicated that the last 18 days of any campaign is really the period of time which is crucial. (T. 379-381). He planned the Kinsey campaign so that the campaign brochures would arrive in the hands of the voters during the last 18 days in a prearranged series and build to a climax on the day before the election. (T. 379). This was done knowing full well that Judge Green would

not have an opportunity for an effective response. In addition to the obvious time constraints, Judge Green could not comment on cases pending before him. Mr. Spearing wrote the brochures and faxed them to candidate Kinsey for her approval. (T. 380-1). The brochures were printed in Tallahassee and mailed from there. (T. 381). Mr. Spearing's fee for running the campaign was $15,000. (T. 398).

Mr. Spearing, campaign manager Roy Kinsey and candidate Kinsey were all well aware of the numerous restrictions placed upon judicial campaigns. (T. 141, 375). Mr. Roy Kinsey, acting on behalf of the candidate, attended a judicial elections seminar presented by District Judge Charles Kahn of the First District Court of Appeal. Both Spearing and candidate Kinsey were provided with the material furnished at that seminar and were fully aware of the Supreme Court's decision in *In re: Alley*, 699 So. 2d 1369 (Fla. 1997). They both stated that they attempted to comply with all of the restrictions on judicial campaigns. (T. 75, 141-2, 375-6, 382). Judge Kinsey stated that she viewed the *Alley* decision as the "bible" to guide the way in which she ran her campaign. (T. 75, 141).

The Hearing Panel concludes that the *Alley* decision involved election misconduct of a more egregious nature than the conduct charged against Kinsey. The Hearing Panel recognizes that *Alley* resulted in a stipulated public reprimand with a cautionary note by the Court that the penalty would have been more severe had the Court not been "constrained" by the stipulated recommendation of the JQC Investigative Panel for a public reprimand. The stipulated recommendation was the result of a JQC Rule 6(b) hearing and an evidentiary hearing never took place before the Hearing Panel. The distinctions between *Alley*

and *Kinsey* are discussed in the concluding section of these Recommendations.

Judge Kinsey did not retreat from any of her campaign brochure statements other than to admit two minor mistakes in regard to Exhibit 4 and to further indicate that she should not have used the words "thugs" and "punks" in one brochure. She said this was because these words were not a part of her own everyday vocabulary. (T. 120, 169). She also indicated that she was in a rush during the last 18 days of the campaign and that these words just slipped by. (T. 169). The Hearing Panel accepts the fact that the last 18 days of this campaign were high pressure days. However, the fact that this was a stressful and rushed time does not constitute an excuse for ethical violations. The Panel rejects last minute stress as an excuse for possible ethical violations in this case. Judge Kinsey had funding and professional assistance. She also won the race by a very substantial margin.

There was substantial evidence offered without objection which was critical of the then incumbent Judge Green. Although Judge Green was certainly not on trial, the Hearing Panel notes that he was not called to testify by the prosecution and thus much of the adverse evidence concerning Judge Green was unrebutted.

FINDINGS AND CONCLUSIONS AS TO SPECIFIC CHARGES

Charge 1 concerns JQC Exhibit 1. This brochure shows candidate Kinsey in the center of a large photograph surrounded by 10 heavily armed police officers holding automatic weapons and wearing flack jackets. Above the picture is the legend *"Who do these guys count*

on to back them up?" Patricia Kinsey was the obvious intended answer. The brochure noted that Kinsey was the "unanimous choice" of law enforcement and that she was *"tough as nails on criminals."* This statement was immediately above a picture of Patricia Kinsey standing with two uniformed police officers holding police dogs. This "tough as nails on criminals" position was attributed to the future Judge Kinsey by the brochure.

Through this brochure, Judge Kinsey was telling the public that she would be very tough on crime and that she favored the police. Even Mr. Spearing admitted that the photograph of Kinsey among 10 armed police officers would have been improper had Kinsey worn a robe in the picture. (T. 433). The Hearing Panel, by clear and convincing evidence, finds that this brochure intentionally created and conveyed the message that Judge Kinsey would support the police if elected to the position of County Judge. The Panel also notes a basic unfairness in that no incumbent judge could have properly appeared in any similar posed photograph in campaign material.

The charging document states that Kinsey should have pledged only the performance of her duty of impartial justice under Canon 7(A)(3)(d)(i)(ii). This canon provides:

> All Judges and Candidates
>
> * * *
>
> (d) shall not:
>
> (i) make pledges or promises of conduct in office *other than the faithful and impartial performance of the duties of the office.*

> (ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court. (emphasis supplied).

Although the Hearing Panel does not hold that only the words "faithful and impartial performance of the duties" may be used, the Panel does conclude that this campaign material went too far and constituted an ethical violation. Candidate Kinsey committed herself to a pro-police position on matters which she affirmatively stated would come before her on a daily basis as a judge. The Hearing Panel finds this brochure to be clear and convincing evidence that Judge Kinsey intended to convey her pro-police position to the voters.

In the overall context of this campaign, Judge Kinsey also told the voters that her opponent, Judge Green, was soft on criminals and did not protect victims and that she would do so by helping law enforcement put criminals in jail. This brochure committed Judge Kinsey to future conduct on matters she affirmatively stated would come before her for rulings. Obviously, the safe approach would have been to fully comply with Canon 7 and limit campaign pledges accordingly.

As to Charge 2, the campaign brochure in question was JQC Exhibit 2. The brochure is entitled *"If You Are a Criminal You Probably Won't Want to Read This!"* Candidate Kinsey was described as a "passionate advocate for victims" who "identifies with the victims of crime." The brochure notes that Kinsey had been "unanimously endorsed" by "area law enforcement officers" and that she had the endorsement of the Florida Police Benevolent Association and the Fraternal Order of Police. Such endorsements may certainly be brought to the attention of

voters but this brochure went further and actually stated that police officers risk their lives every day and thus "police officers expect judges to take their testimony seriously and to help law enforcement by putting criminals . . . behind bars." Again the message was clear, Judge Kinsey touted herself as pro-police and committed to "help law enforcement."

She certainly did not say that she would also help the public defenders appearing in her courtroom. A candidate's pledge of support for either the public defenders or state attorneys in criminal matters would be obviously improper.

We recognize that words such as "impartial" and "criminals" were also used in this campaign brochure and that "fair" and "compassionate" were used in others. However, these few words do not distract from the overall message that with Pat Kinsey "the criminals knew they were in for a rough ride" and that she would actually "help law enforcement." The distinction between a presumed innocent "defendant" and a convicted "criminal" was never suggested in the written campaign material.

Obviously, a person is not a "criminal" until after he or she is "convicted." This brochure (Exhibit 2) was an ethical violation because it constituted a commitment or promise to act in a particular manner in future criminal cases.

Charge 3 was based upon Exhibit 3 entitled *"Let's Elect Pat Kinsey."* This is the only brochure which was not a part of the series of brochures mailed during the last 18 days of the campaign. Although this brochure, standing alone, is less offensive than the others, when viewed in context along with the other brochures and radio statements it also constituted a similar improper commitment.

Again, Pat Kinsey was pictured with police officers along with the pledge that "Pat Kinsey will work with our law enforcement officers . . . "

Charge 4 concerned a radio interview quoted in part in the charging document. A copy of the entire interview was attached as an exhibit and admitted as JQC Exhibit 8 without objection. (T. 118). The Hearing Panel concludes that a judicial candidate does not have an affirmative duty to disavow all mistaken impressions that citizens and voters might have concerning that candidate. However, there is simply no question as to Judge Kinsey's intentions to portray herself as pro-law enforcement. When the caller on the radio show stated that he knew she was "pro-law enforcement" he followed up with a question as to whether this constituted bias toward the defense. Judge Kinsey answered by portraying herself as a prosecutor and portraying her opponent as a defense attorney with Judge Green still in the defense mode. The Panel finds that Judge Kinsey's statements did leave the firm and definite impression that even as a judge she would remain in the "prosecution mode." She intentionally contrasted herself, painting Judge Green in the defense mode and herself in the prosecution mode.

The radio interview also included candidate Kinsey's comment:

> I work very closely with law enforcement officers as a prosecutor. And they're left, begging for help. And all they see when they come to court is a judge who either dismisses a case or minimizes it by not holding the criminals accountable. So, I have given up my job; I have turned in my badge and gun, as a prosecutor, I have turned in an irrevocable letter of resignation, so I can run for

> judge because somebody has to do it. Somebody has to hold these criminals accountable. And that is why I am here.

Again, this constituted a very strong statement that Judge Kinsey would assist the police. Obviously, under our system, a defendant is not a criminal until convicted.

The radio interview also contains Judge Kinsey's statement that a judge's responsibility was to be "absolutely a reflection of what the community wants." The Hearing Panel does not agree. We also note that Judge Lacey Collier testified extensively and without objection that the judiciary is to be independent and is not to be merely a reflection of the desires of the community. (T. 184-5). The Hearing Panel agrees with Judge Collier, a judge has a higher duty of impartiality rather than to merely reflect what the community wants on a particular issue. Substantial precedent and much of our nation's history so indicates. See *In re: Code of Judicial Conduct Canons 1, 2 and 7A(1)(b)*, 603 So. 2d 494 (Fla. 1992); where the Florida Supreme Court quoted Alexander Hamilton and numerous other authorities for the time honored view that judges must remain independent both in office and in the process by which they gain their office. *See* 603 So. 2d 497, 498.

The above decision at 603 So. 2d 497 is an opinion concerning JQC charges against Judge Hugh Glickstein who publicly endorsed an incumbent Supreme Court Justice in a merit retention election. Judge Glickstein sued the JQC members in circuit court to declare the canons unconstitutional as a deprivation of his rights to free speech. The Supreme Court transferred the circuit court action directly to the Supreme Court to determine

the constitutional issues and held the canons constitutional without ruling on the merits of the JQC charges.

Charge 5 asserts eight different examples drawn from campaign language with a concluding assertion that Patricia Kinsey deliberately cloaked her candidacy in an umbrella of law enforcement and intentionally portrayed herself as pro-prosecution and pro-law enforcement and that she would so act as a judge. The Hearing Panel agrees and concludes that the Kinsey campaign was just such a deliberate and intentional attempt. Charge 5 is drawn from the six brochures and the radio interview and we will not again repeat each of these excerpts.

Judge Kinsey told voters that they could expect her to "bend over backward" in protecting victims. Even if any one of the eight examples in Charge 5 may be individually viewed as insufficient to warrant discipline, the law of JQC proceedings under the clear and convincing evidence standard provides:

> Conduct unbecoming a member of the judiciary may be proven by evidence of specific major incidents which indicate such conduct, or it may also be proved by evidence of an accumulation of small and ostensibly innocuous incidents which, when considered together, emerge as a pattern of hostile conduct unbecoming a member of the judiciary.

In re: Kelly, 238 So. 2d 565, 566 (Fla. 1970). *Kelly* was the first reported JQC case and which [sic] occurred over 30 years ago. It has been repeatedly followed in subsequent cases. See *In re: Shea*, 759 So. 2d 631, 638 (Fla. 2000); *In re: Graham*, 620 So. 2d 1273, 1275 (Fla. 1993); and *In re*

McAllister, 646 So. 2d 173, 178 (Fla. 1994). Clearly, candidate Kinsey engaged in a pattern of conduct unbecoming a member of the judiciary.

Charge 6 accused Kinsey of knowingly making a false statement and the Hearing Panel concludes that the evidence does not warrant a finding of guilt as to this specific aspect of the brochure which was JQC Exhibit 4 entitled *"A Vital Message From Law Enforcement."*

Charge 7 concerned a brochure entitled *"A Shocking Story of Judicial Abuse."* This brochure was part of the campaign strategy or [sic] portraying Judge William Green as demonstrating a shocking lack of compassion for an elderly couple by offering to put them in jail for their own protection from their violent son, Mr. Grover Heller, who was asserted to have been released by Judge Green.

Judge Kinsey has been found guilty in part of this charge. The Hearing Panel concluded, by clear and convincing evidence, that she made a knowing misrepresentation concerning Mr. Heller's bond. In fact, the Heller bond had been revoked and Judge Kinsey knew or should have known it. (T. 121-124).

Charge 8 concerned a 60 second radio spot and although information was omitted from this commercial, the Panel found an absence of guilt under the clear and convincing evidence standard. The Panel concluded that as a brief radio advertisement, all of the facts of the controversy did not have to be included.

Charge 9 is again based on Exhibit 4 and contains an assertion of two different misrepresentations. The Panel finds guilt as to the first allegation only in this charge.

The Panel concludes that Kinsey did knowingly misrepresent the nature and seriousness of the criminal charges pending in the *State v. Johnson* case because the brochure left the clear impression that Johnson had been charged with attempted murder and burglary and no such charges were in fact pending at the time that he appeared at his bond hearing. This mistake in the campaign brochure was admitted by counsel for Judge Kinsey. (T. 65). Judge Kinsey herself agreed that Mr. Johnson had not been charged with attempted murder at the time of his first appearance. She was asked by her own counsel:

> Q. Why did you say in the brochure that Mr. Johnson was charged with attempted murder?
>
> A. That's the way I thought of that case. That was my case for a very long period of time. And when I read the materials, that's what I saw and that's what I charged. I just didn't even think about the fact that that wasn't the original charge. I don't even remember what the original charge was.
>
> Q. Was it your intent in any way to misrepresent or mislead people that would read this brochure?
>
> A. No, it was not. (T. 153-4).

Despite this denial of intent, the Panel concludes that there was a knowing misrepresentation as to the charges actually pending against the defendant Johnson. Certainly Assistant State Attorney Kinsey was on notice of the correct charges.

Charge 10 is also based on the *"Vital Message"* brochure and the Panel concludes that the comments regarding defendants Stephen Johnson and Gerard Alsdorf should

have been reasonably expected to affect the outcome of their future cases. Judge Kinsey testified that a jury was subsequently selected in the *Johnson* case and no perspective juror knew of the campaign literature. (T. 135). This does not dispel the violation because the comments certainly could be expected to affect the outcome of those cases.

Charge 11 asserts misrepresentations as to the incumbent judges nickname and the fact that he consistently ignored the pleas of police officers. Although we certainly consider this kind of name calling to be "bad form," in this case, there was evidence that Judge Green was consistently referred to at least by the police community as "Let 'Em Go Green" and there was substantial evidence that he did ignore the pleas of police officers. (T. 102-4, 302, 373, 397, 444). As previously indicated, there simply was no contrary evidence presented on this point and Judge Green, although available, was not called to testify. The Panel finds Judge Kinsey not guilty of this charge.

Charge 12 asserts that Judge Kinsey engaged in conduct unbecoming a candidate for a judicial post and that her campaign was completely inconsistent with the dignity appropriate to judicial office with the result of bringing the judiciary into disrepute. The Hearing Panel, by clear and convincing evidence, finds that this campaign did convey the false and misleading impression of the Judge's role – particularly in regard to judicial independence and impartiality, in the handling of criminal cases. Judge Kinsey was found not guilty of Charges 5, 8 and 11, but on all other charges (1, 2, 3, 4, 5, 7, 9, and 10), this charge is sustained.

A judicial election is markedly different from a normal political election and is governed by substantially higher standards. *In re: Alley*, at 1369. Judge Kinsey stated that she recognized these higher standards from the beginning of her campaign and so advised everyone connected with the campaign. (T. 142).

RULINGS ON DEFENSIVE MOTIONS

By prehearing motions, Judge Kinsey asserted two basic arguments. Initially she contended that the content of her brochures and radio excerpts were political speech protected by the First Amendment of the United States Constitution. She further contended that the Canons within the Code of Judicial Conduct were applicable to judicial officers and not to her as a candidate. She asserted this as a reason for much of her conduct during the campaign while at the same time asserting at trial that she was fully aware of and had complied with Florida ethical requirements as stated in *In re: Alley*. (T. 75, 141, 142).

The Hearing Panel, at trial, announced denial of all of the motions implicitly including a ruling that the restrictions on judicial elections imposed by the applicable Florida Canons did not violate protected free speech and further that the Canons were indeed applicable to Florida judicial candidates. See *In re: Code of Judicial Conduct (Canons 1, 2, and 7A(1)(b))*, 603 So.2d 494 (Fla. 1992) where the Florida Supreme Court specifically held that Canons 1, 2, and 7 of the Code of Judicial Conduct were constitutional and applicable in a Florida judicial election.

The Preamble to the Florida Code of Judicial Conduct is basic but very informative. It states:

> Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law.
>
> * * *
>
> The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies.

The Definition section of the Code provides:

> A candidate is a person seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy. . . . The term "candidate" has the same meaning when applied to a judge seeking election or appointment to non-judicial office.

The state of Florida has a compelling interest in maintaining the actual and apparent independence of the Florida judiciary. Judicial Canons have been held constitutional and proper restrictions on judicial elections throughout this country so long as there [sic] are narrowly tailored to accomplish the necessary compelling end. See *Broadrick v. Oklahoma*, 413 U.S. 601 (1973); *Republican Party of Minnesota v. Kelly*, 63 F.Supp.2d 967 (D. Minn. 1999) and *In the matter of Bybee*, 716 N.E. 2d 957 (Ind. 1999).

In the Judge Hugh Glickstein matter at 603 So.2d 494, p. 497, the Florida Supreme Court stated:

> Regulations that attempt "to restrict or burden the exercise of First Amendment rights must be

> narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society. *Broadrick v. Oklahoma*, 413 U.S. 601, 611-12, 93 S.Ct. 2908, 2915, 37 L.Ed.2d 830 (1973).
>
> * * *
>
> Maintaining the impartiality, the independence from political influence, and the public image of the judiciary as impartial and independent is a compelling governmental interest. E.g., *Morial; Gaulkin; Kaiser.*

See: *Morial v. Judiciary Comm'n*, 565 F.2d 295 (5th Cir. 1977), *cert. denied*, 435 U.S. 1013, 98 S.Ct. 1887, 56 L.Ed.2d 395 (1978); *In re Gaulkin*, 69 N.J. 185, 351 A.2d 740 (1976); and *In re Kaiser*, 111 Wash.2d 275, 759 P.2d 392 (1988), as relied upon by the Florida Supreme Court at 603 So. 2d at p. 497.

The Hearing Panel concludes that Canons 1, 2, 3 and 7 were correctly charged upon and applied herein and further that there has been no unconstitutional restriction on the rights of free speech.

RECOMMENDATIONS

The Panel finds that Judge Kinsey is guilty of serious violations growing out of her campaign in which she was successful in obtaining the position of county court judge. The Panel has no hesitancy in recommending that she be publicly reprimanded by this Court but believes leaving her in office with no further penalty is entirely inappropriate. Under the current Constitution, Judge Kinsey is subject to removal or further penalty in the form of a fine.

The Hearing Panel has thoroughly deliberated this issue and concludes that the penalty imposed here must be sufficient to strongly discourage others from violating the Canons governing contested elections.

At least one member of this Panel strongly urged Judge Kinsey's removal. This Panel member concurs in and would apply the statement of this Court in *Alley* that: "We find it difficult to allow one guilty of such egregious conduct to retain the benefits of these violations and remain in office."

However, the conduct in *Alley* was, in the view of the majority of the Hearing Panel, significantly more egregious than the conduct involved in the present case. Judge Alley admitted to intentionally misrepresenting the basic qualifications of her incumbent opponent and in [sic] intentionally misrepresenting her own qualifications. She altered a published newspaper to make it appear she had been endorsed by the paper which had actually endorsed her opponent. She intentionally injected party politics into the nonpartisan race. Judge Kinsey's misconduct did not rise to this level.

Despite the less egregious nature of the violations, Judge Kinsey must be punished for her conduct and such conduct simply cannot be tolerated in future elections. While a reprimand alone is insufficient, there was no evidence that Judge Kinsey is presently unfit to hold office other than her misconduct involved in winning the election. Although such misconduct can rise to the level of present unfitness as is required for removal under Article V, § 12(a)(1), here, the Panel finds the conduct does not warrant removal. Indeed, the Investigative Panel made no direct argument to this Panel that Judge Kinsey should be

removed. (T. 45, 570-575). The recommendation of a penalty was left entirely to the Hearing Panel.

Thus under all of the circumstances including the very favorable character evidence, and after due consideration, the Hearing Panel by a vote of at least 4 members recommends that Judge Kinsey be publicly reprimanded and fined the substantial sum of $50,000.00 plus costs of these proceedings. This amount should be paid within a reasonable time and jurisdiction should be retained by the JQC for purposes of enforcement.

While one Panel member urges removal, another member strongly disagrees with the amount of the fine. This member has been permitted to state a contrary view regarding the fine as follows.

This member states that, although Judge Kinsey crossed certain ethical lines in her election and should be sanctioned for it, the $50,000.00 fine bears no relation to reality. It is a figured plucked out of thin air, explicitly intended to "be sufficient to strongly discourage others from violating the canons." The fine is approximately 50% of the yearly salary of a county judge and is not based on any evidence of Judge Kinsey's finances nor what hardship a $50,000.00 fine would result in. This would be the first fine imposed in a JQC proceeding in Florida and research shows that no other state has imposed a fine of this magnitude. *See e.g., Mississippi Commission on Judicial Performance v. Byers*, 757 So. 2d 961 (Miss. 2000) (fine of $1,500 imposed with two Justices dissenting); *Mississippi Commission on Judicial Performance v. Sanders*, 749 So. 2d 1062 (Miss. 1999) ($3,000 fine recommended by Commission but rejected by Court); *Mississippi Commission on Judicial Performance v. Jones*, 735 So. 2d 385 (Miss. 1999)

($1,500 fine); *Mississippi Commission on Judicial Performance v. Sanders*, 708 So. 2d 866 (Miss. 1998) ($1,500 fine); *Mississippi Commission on Judicial Performance v. Haltom*, 681 So. 2d 1332 (Miss. 1996) ($4,932.68 fine); *Mississippi Commission on Judicial Performance v. Ishee*, 627 So. 2d 283 (Miss. 1993) (fine of $5,600 with one Justice dissenting); *In re: Judicial Campaign Complaint Against Kienzle*, 708 N.E. 2d 800 (Ohio 1999) ($1,000 fine); *In re: Judicial Campaign Complaint Against Hein*, 705 N.E.2d 687 (Ohio 1999) ($2,500 fine); *In re: Judicial Campaign Complaint Against Burick*, 705 N.E.2d 422 (Ohio 1999) ($7,500 fine).

This member agrees that Judge Kinsey should undergo the humiliation of standing before the En Banc Florida Supreme Court for a public reprimand. This is a sufficient disciplinary measure in cases such as this where a majority of the Panel agrees that the judge is not presently unfit to hold office. Indeed, this member believes Judge Kinsey is salvageable with a bright future in her court.

Finally, this member believes no penalty should be imposed simply to set an example for future judicial candidates. To do so makes the JQC actions appear arbitrary and capricious and does not serve to " . . . maintain confidence in our legal system." This goal is set out in the Preamble to the Florida Code of Judicial Conduct.

FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

By:

JUDGE HARVEY L. GOLDSTEIN,
Chairman, Hearing Panel,
Florida Judicial Qualifications Commission
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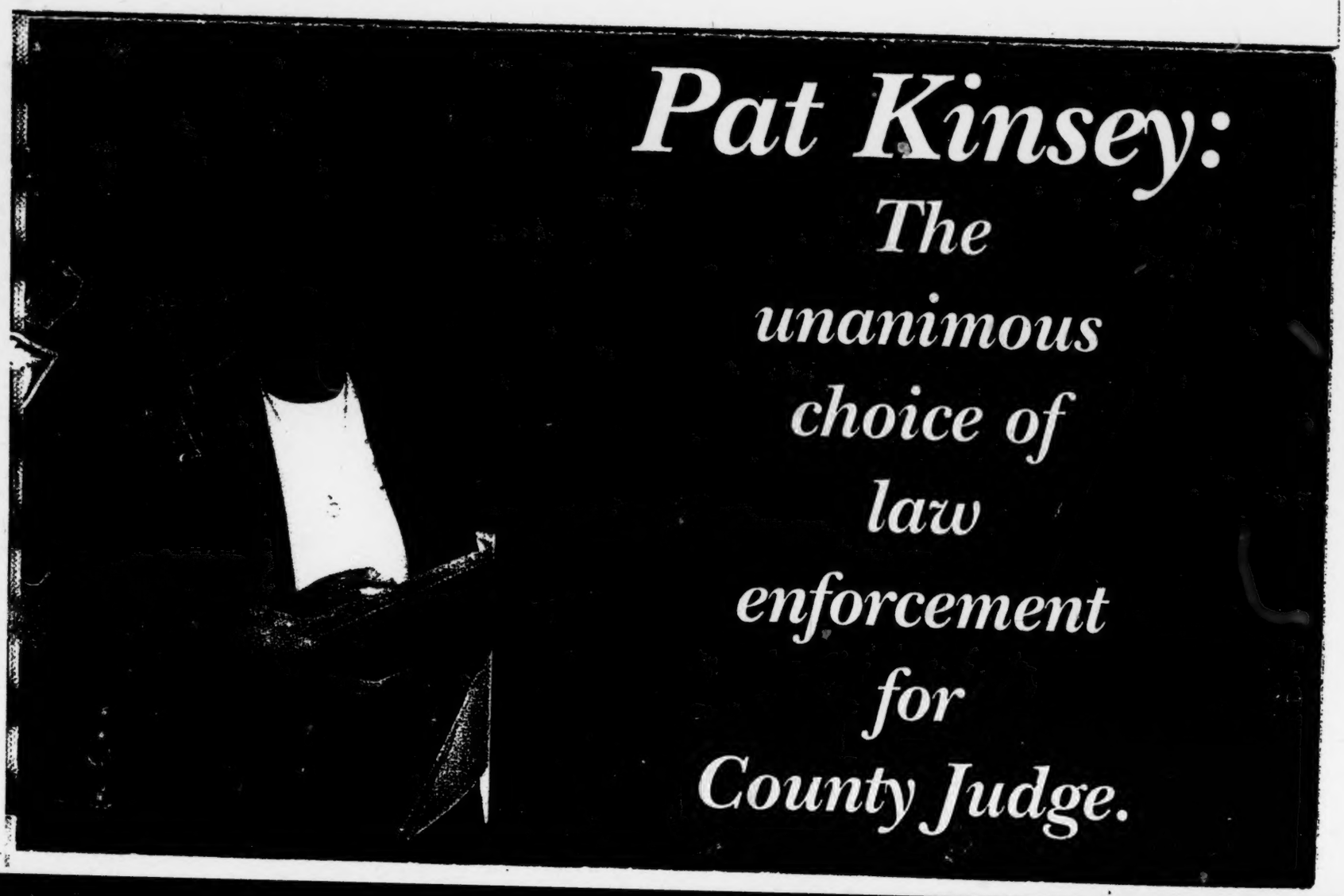

Pat Kinsey: The unanimous choice of law enforcement for County Judge.

Pat Kinsey: She's Fair

Police officers are people too. They have families, hopes and dreams. They know, first hand, that people get in trouble for a variety of reasons and under many circumstances. The police support Pat Kinsey because she is fair and understanding when someone has a problem yet unyielding when she feels criminals are trying to take advantage of the system.

Law enforcement supports Pat Kinsey because they know she will be fair and just in the treatment of ordinary citizens and tough as nails on criminals who abuse the system.

Pat Kinsey: She's Compassionate

Cops see the worst, and best, in society. They routinely encounter families in trouble and victims whose lives are destroyed by violent criminals roaming our streets. The law enforcement officers of our community are supporting Pat Kinsey because she is compassionate for those less fortunate and is sensitive to families in trouble.

Pat Kinsey understands the needs of victims and their families and will be a compassionate judge for the truly deserving.

You can make a difference by voting Tuesday, September 1st!

Your Law Enforcement Officers Unanimously Support Pat Kinsey for County Judge.

Please Vote on Tuesday, September 1st!

Pat Kinsey: She's Tough

Law enforcement officers willingly risk their lives every day to protect you. They face the prospect of great bodily harm, even death, in apprehending violent criminals on our streets and in our neighborhoods. After facing these threats, your police officers expect judges to take their testimony seriously and to help law enforcement by putting criminals where they belong ... ***behind bars!***

Your area police officers have unanimously endorsed Pat Kinsey for County Judge because they know she is tough on violent criminals. As a prosecutor, Pat Kinsey took an unprecedented interest in police arrests, she visited crime scenes and demanded to know the facts.

When Pat Kinsey brings a case to trial, the criminals knew they were in for a rough ride.

PAT KINSEY
FOR COUNTY JUDGE

Who do these guys count on to back them up?

"Pat"
Kinsey
For County Judge

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If you are a criminal, you probably won't want to read this!

— DETAILS INSIDE —

Pat Kinsey...Tough, Fair, Compassionate

A Tough Prosecutor

Criminals know when Pat Kinsey is their prosecutor it's no laughing matter. Pat Kinsey has earned a reputation as a tough, aggressive prosecutor who leaves no stone unturned in the pursuit of justice.

Pat has amassed a solid record of convictions in crimes ranging from Murder to Sexual Battery, from Petty Theft to Domestic Violence. Pat pursues each and every case as if she, or her family, were the victim. This intensity has earned her the respect of the law enforcement community, the men and women serving on the front lines of the war on crime.

Pat Kinsey has been unanimously endorsed by our area law enforcement officers because they know she'll hold criminals accountable.

A Fair Person

Pat Kinsey did not grow up with a silver spoon in her mouth. Growing up in a military family, Pat Kinsey lived in many places and interacted with diverse people from many walks of life. Pat understands the problems families face and will use her life experiences to render fair and impartial judgments from the bench.

Pat Kinsey understands people. As our County Judge, she will render fair and impartial judgment based on her extensive life experiences.

Let's Elect Pat Kinsey for County Judge. Please Vote on Tuesday, Sept. 1st.

A Passionate Advocate for Victims

Above all else, Pat Kinsey identifies with the victims of crime. For too long, criminals have been allowed to avoid the consequences of their actions, and victims have been left to pick up the pieces. Pat Kinsey believes criminals should be required to pay the cost of their incarceration and restitution to their victims.

Pat Kinsey believes a judge should protect the victims of crime and listen to the needs and concerns of tax-paying, law-abiding citizens.

Pat Kinsey is Endorsed by:

Florida Police Benevolent Association

Representing over 32,000 Law Enforcement Officers in Florida

Fraternal Order of Police

Representing over 270,000 Police Officers Nationwide

Pd. Pol. Adv. Paid For and Approved by the Pat Kinsey for County Judge Campaign, Non-Partisan

Who will demand respect for our legal system?

Pat Kinsey...She's Tough

Law enforcement officers willingly risk their lives every day to protect you. They face the prospect of great bodily harm, even death, when apprehending violent criminals on our streets and in our neighborhoods. After facing these threats, your police officers expect judges to take their testimony seriously and to help law enforcement by putting criminals where they belong...behind bars!

Your area police officers have unanimously endorsed Pat Kinsey for County Judge because they know she's tough on violent criminals. As a prosecutor, Pat Kinsey took an unprecedented interest in police arrests; she visited crime scenes and demanded to know the facts.

When Pat Kinsey brought a case to trial, the criminals knew they were in for a rough ride.

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JQC-3

Let's Elect

"Pat" Kinsey

For County Judge

Tough . . . Fair . . . Compassionate

"A judge must never forget whose rights must be protected . . . yours! Victims deserve protection. Criminals deserve swift and just punishment."

Pat Kinsey Believes...

- ★ A judge should protect victims' rights.
- ★ Citizens deserve a judge who listens and has their best interests at heart.
- ★ Criminals must be held accountable for their actions.
- ★ We must support our hard-working law enforcement officers by putting criminals behind bars, not back on our streets.
- ★ County court should operate efficiently. A judge must treat citizens, jurors and court personnel with respect.

Please Vote Pat Kinsey for County Judge on Tuesday, September 1st!

Professional Experience

- ★ Felony Prosecutor for the First Judicial Circuit, Escambia County – prosecuted cases involving murder, sexual battery, robbery, drugs and aggravated assault
- ★ Drug Court Prosecutor – an alternative program providing both treatment and punishment for defendants with drug and alcohol addictions
- ★ Misdemeanor Prosecutor for Escambia County – prosecuted cases involving domestic violence, DUI, shoplifting and assault & battery
- ★ 17 years experience in the business world – Regional Manager for a division of Chase Manhattan Bank

Pat Kinsey will work with our law enforcement officers to protect victims' rights and hold criminals accountable for their actions.

Education/Civic Involvement

- ★ B.S. Degree in Political Science from the University of West Florida, Summa Cum Laude (Highest Honors)
- ★ Graduate – FSU College of Law (Juris Doctor) with High Honors
- ★ Instructor – Domestic Violence Workshops to help victims and families
- ★ Member of Escambia/Santa Rosa Bar Association
- ★ Awarded 1998 Toastmasters Regional "Communication and Leadership" Person of the Year Award
- ★ Award for Service and Assistance to the Escambia County Sheriff's Department as a Prosecuting Attorney
- ★ Appointed by the Supreme Court to the Judicial Management Council's Long Range Planning Workshop
- ★ Awarded Certificate of Appreciation from Lakeview Center for exceptional contributions to continuing education in Domestic Violence Workshops
- ★ Member of Florida Council on Crime and Delinquency

Pat is married to Attorney Roy Kinsey, and they have a daughter, Jennie, who will be attending FSU College of Law this fall.

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A Vital Message From Law Enforcement

– Details Inside –

Judge Green "Lets 'em Go" . . . A Cop's Worst Nightmare

Take a look at some of the characters Judge "Let 'em Go" Green has released into our community.

Case #1: Meet **Stephen Durant Johnson**

Charged with: Attempted First Degree Murder, Burglary of a Dwelling with a Battery, Violation of a Restraining Order (Domestic Violence) and False Imprisonment (Kidnapping).

Facts of Case: Stephen Johnson pled no-contest to killing a woman in Mississippi and served ten years in state prison. After his release, Johnson returned to Pensacola and married. After years of suffering Mr. Johnson's domestic violence and cocaine addiction, his wife filed for divorce and obtained a restraining order. Mr. Johnson vowed to kill his wife "just like I buried that bitch in Mississippi."* True to his word, Mr. Johnson came to the victim's home in the middle of the night, cut the phone lines to the house, kicked the front door in and began strangling the victim to the point he was charged with attempted murder. He was arrested on a no-bond warrant.

What Judge Green Did: **Let 'em Go.** The next morning, Judge Green reduced Johnson's bond to $10,000 (requiring him to pay just $1,000), and he was released.

Current Status: Concerned for the safety of the victim, the prosecutor, Pat Kinsey, immediately appealed Judge Green's decision to Circuit Judge Joseph Tarbuck who ordered law enforcement to take Johnson back into custody without bond. Johnson remains in the Escambia County Jail without bond pending trial.

*Actual quote from restraining order

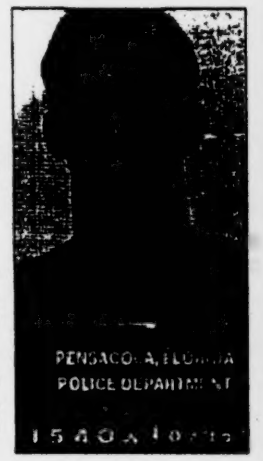
Case #2: Meet **Robert Allen Christenson**

Charged with: Nine cases of indecent exposure.

Facts of Case: Robert Christenson confessed to victimizing more than 50 women in the Fox Run Subdivision as they returned to their homes by jumping out of the bushes, wearing a mask, naked from the waist down, and exposing himself while masturbating. He was tried on nine of the cases and convicted on eight.

What Judge Green Did: **Let 'em Go.** Judge Green could have sentenced Christenson to eight years in the County Jail and a fine up to $8,0000.00. Instead, he sentenced him to four years probation and a fine of $1,930.00. He was given credit for time served (28 days in jail and another 80 days in a work release program) and released.

Case #3: Meet **Gerard Alsdorf**



Charged with: Ten counts of sexual battery and ten counts of lewd and lascivious acts on a child under the age of 16.

Facts of Case: On July 22, 1998, Judge Nancy Gilliam, a circuit court judge, signed a no-bond warrant for Alsdorf's arrest for allegedly forcing an eight-year-old girl to perform a sex act on him and then continuing the sexual abuse for a ten-year period. The following morning, Judge Green asked Alsdorf how much money he had and what bond he thought he could afford.

What Judge Green Did: **Let 'em go.** Although a Circuit Judge had determined, after a review of the evidence, that Alsdorf should be held without bond, Judge William Green released him on a $50,000 bond (payment of just $5,000, an amount Alsdorf indicated he could afford) and released him into our community.

Current Status: Concerned for the safety of the victims, the prosecutor in this case immediately brought the matter before Circuit Judge Laura Melvin who revoked Alsdorf's bond. He is currently in the Escambia County Jail without bond pending trial.

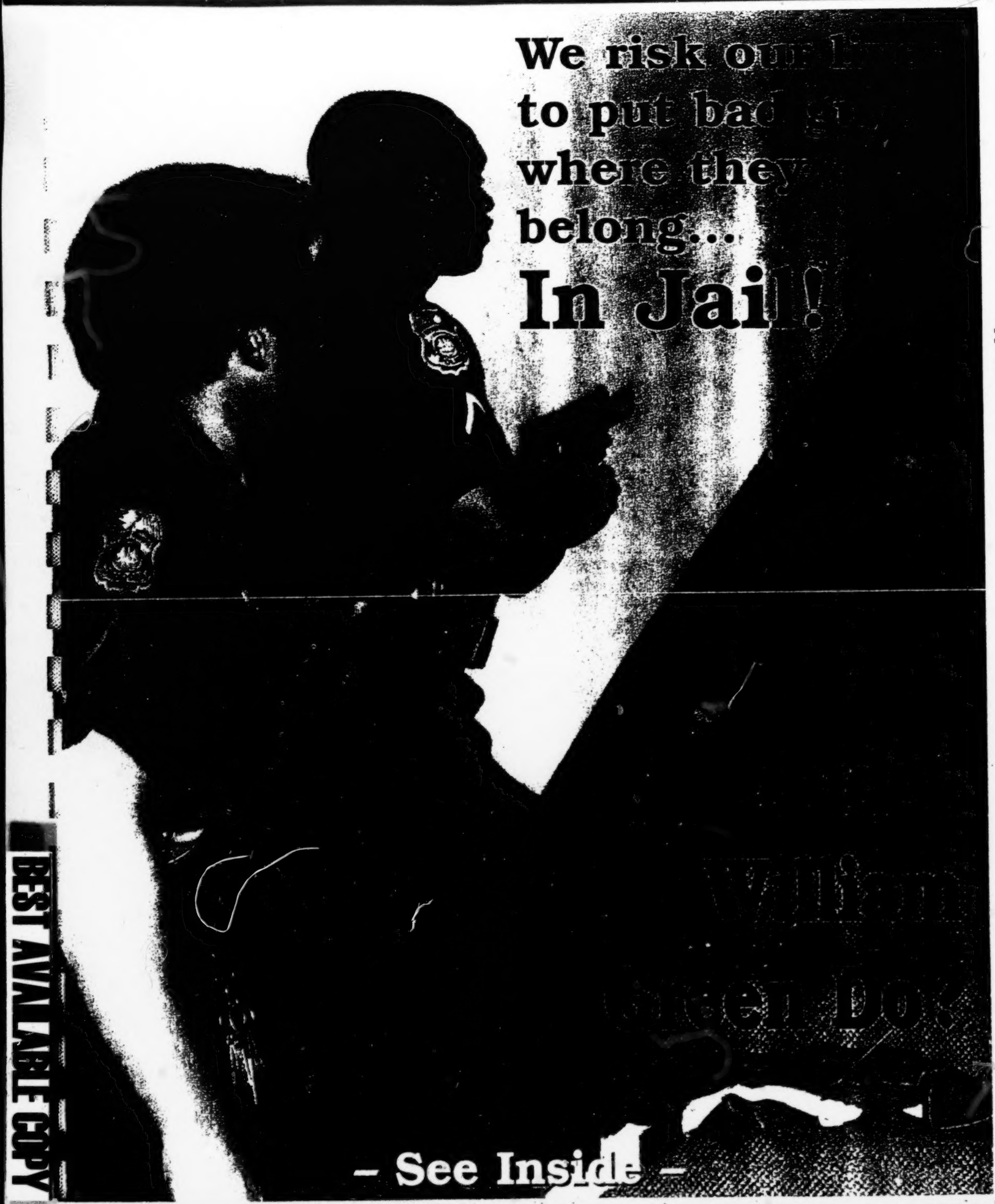
Judge "Let 'em Go" Green

Law enforcement officers risk their lives to bring violent criminals to justice. Prosecutors work hard to build cases and fight to keep dangerous felons in jail until trial. Victims have a right to expect judges to protect them by denying bond to potentially dangerous offenders.

Judge "Let 'em Go" Green has consistently ignored the pleas of police officers, prosecutors and victims to keep these potentially dangerous individuals off our streets.

*You **CAN** do something about it.*

*Vote **NO** on Judge William Green on Tuesday, September 1st.*



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Pd. Pol. Adv. Paid for and Approved by the Pat Kinsey Campaign (NP).

The ALTERNATIVE for County Judge.

PAT KINSEY

The Pat Kinsey Alternative for County Judge

Pat Kinsey... A Lifetime of Experience.

Before entering the practice of law, Pat Kinsey had a long and successful career in business. Despite this success, Pat wanted to pursue a lifelong dream... protecting others. Pat became an Assistant State Attorney because she wanted to protect victims and punish wrongdoers for the crimes they commit. For over seven years, Pat prosecuted cases ranging from DUI to First Degree Murder. In this role, Pat saw, first hand, the agony suffered by crime victims and did her best to bring the guilty to justice.

Pat Kinsey is a seasoned prosecutor with the experience to understand the plight of victims and the toughness to keep criminals where they belong... in jail.

Pat Kinsey... Compassion for Victims.

Pat Kinsey would never "test" crime victims to see if they were afraid of their attackers. Pat will listen to the concerns of victims of violent crime and take action to guarantee their security. Most important, Pat Kinsey will bend over backward to ensure that honest, law-abiding citizens are not victimized a second time by the legal system that is supposed to protect them.

Pat Kinsey will put protecting victims, and the public, first!

Pat Kinsey... Will Keep Violent Offenders in Jail.

Pat Kinsey will err on the side of caution when considering the release of someone charged with a violent offense. Period. Pat Kinsey believes it is the duty of the court to remove potentially dangerous individuals from our streets until they have had their day in court. Pat believes crime victims, and the public, have a right to protection from the courts.

Pat Kinsey will use caution before releasing violent offenders.

Pat Kinsey... Supportive of Law Enforcement.

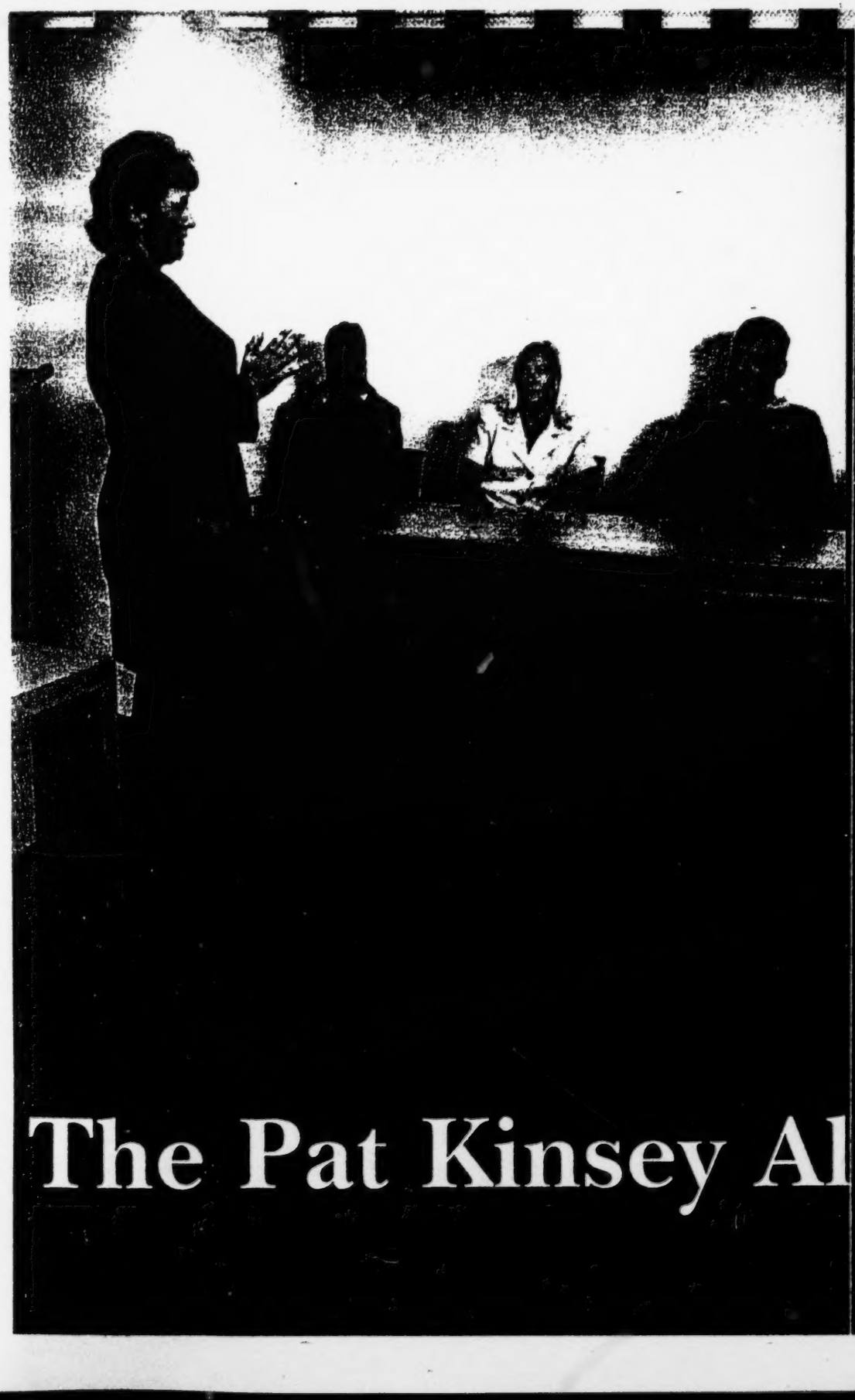
It's unanimous. Pat Kinsey has been endorsed by both the Florida Police Benevolent Association and the Fraternal Order of Police, representing virtually all sworn law enforcement officers in Escambia County. Why? Because these officers know Pat Kinsey will help them keep violent criminals off our streets. Pat Kinsey understands the dangers these officers face and will be supportive of law enforcement as our County Judge.

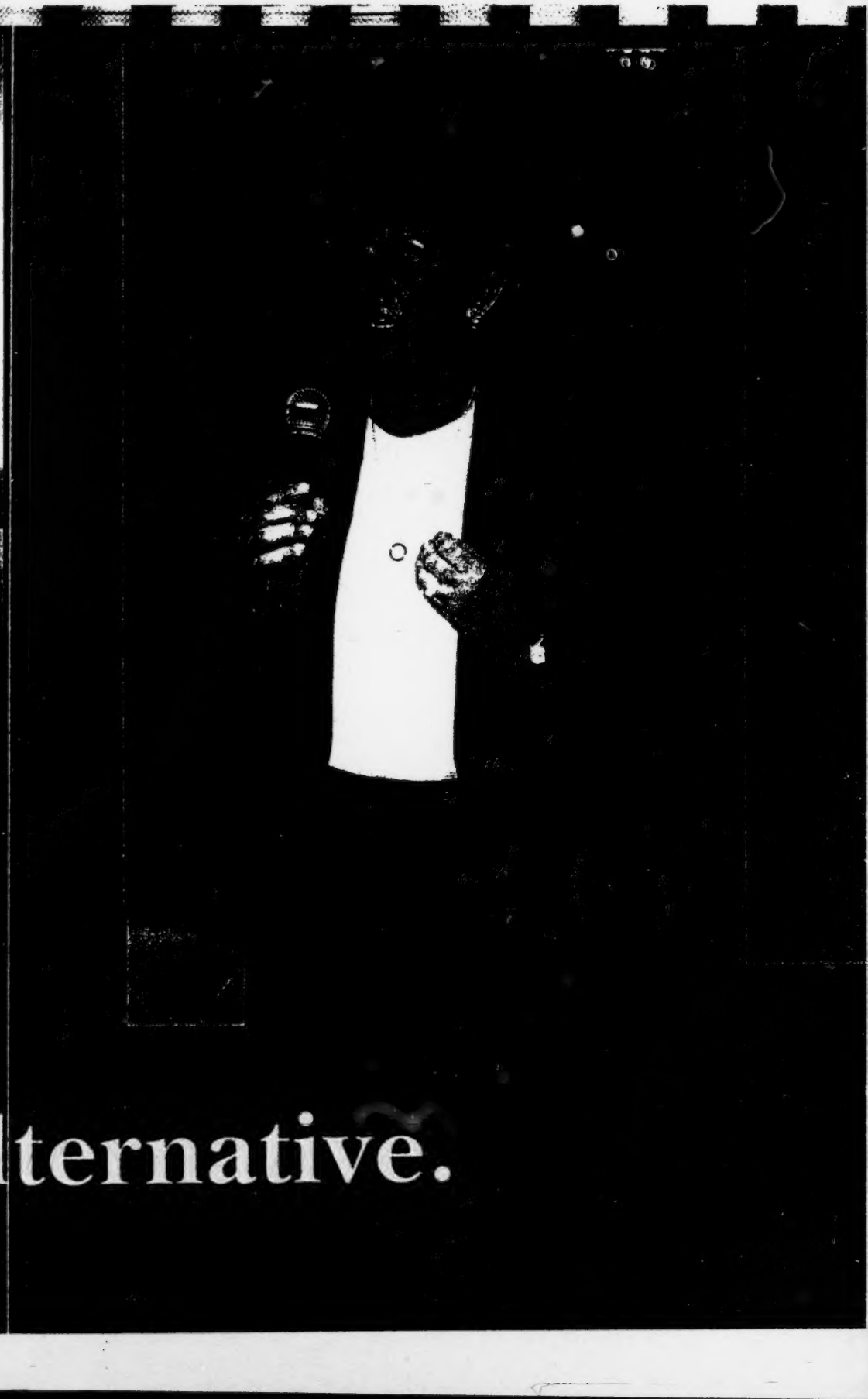
Pat Kinsey will support our valiant law enforcement officers... not make their job harder.

Vote for Pat Kinsey for County Judge on Tuesday, September 1st

PAT KINSEY.
A Judge for All of Us

App. 95





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A shocking Story of Judicial Abuse

– Details Inside –

BEST AVAILABLE COPY

Judge William Green offered to jail the elderly couple instead!

WEATHER

Chance of rain 0%
High 70° Low 44°
5 18 days left in hurricane season

Monday
November 13, 1995

PENSACOLA
News Journal

A Gannett Newspaper

FINAL EDITION

HOLIDAY SHOPPING AT PAWNSHOPS
Consumers find bargains in stores that used to be considered seedy. 1E

HANDLING GATE-CRASHERS
Tactful tips on what to do when an uninvited guest shows up on your doorstep 1B

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INSIDE

Scared couple offered safe haven – in jail

By Ginny Graybiel
News Journal staff writer

Jeanette and Chuck Strangway began getting the chilling telephone calls from her ex-husband after he bonded out of jail.

"He told me, 'I

Attorney's Office prosecutors, who took them back to Green's courtroom Oct. 26 with a plea for help and a request the judge revoke Heller's bond.

When the Strangways, married 22 years, got was a shock.

Green asked the 63-year-old woman and her 67-year-old husband an extraordinary, prodding question.

Did the Strangways want him to put them in the Escambia County Jail for their own protection until Heller's battery case was resolved?

It was a question Green has posed to alleged victims of domestic violence only two or three times in his eight-year career, but it's one advocates for abused people say further intimidates and keeps victims from working within the court system to seek protection.

Green

Stunning question

"I thought, 'Am I hearing right?' " Jeanette Strangway said last week. "Did he ask if my husband and I wanted to be incarcerated? I mean, there's a man loose with a gun.'

"I thought, 'Well, what should I say to a judge?' He scared me. They want to try to scare you, too.'

Jeanette Strangway told Green she didn't want to be jailed.

"I can keep running if I have to," she told him.

Chuck Strangway, a retired Champion International employee, was equally incredulous.

"It stunned me," he said. "I thought to myself, 'They got a motel over there at the jail, or what?' "

He told the judge: "No, I can prepare myself at home, sir." Green then backed off his suggestion.

See JUDGE, 16A

LAW ENFORCEMENT

Charles Strangway and his wife, Jeanette, fear for their safety at the hands of Jeanette's grown son.

Judge suggests couple might be safer in jail

FROM 1A

tion, saying Heller had "at least technically" violated the terms of his release by calling the Strangways.

He revoked the bond, issued a warrant for Heller's arrest, and ordered another bond hearing within 24 hours of his being taken into custody.

Heller was not at the hearing because the Public Defender's Office was unable to locate him. At first, said Strangway, Heller had not been apprehended, and the Strangways didn't know his whereabouts.

Green, who regularly handles domestic-violence cases, told the Strangways that he thought the setting in getting psychological help for a son who had been diagnosed with mental problems.

"There has been an alternative offered to the two witnesses in this case, and neither one of them has responded that they are in fear enough basically to have them-selves placed in protective cus-tody," he said.

Legislature back...

fear," said Robin Hassler, executive director of the Governor's Task Force on Domestic Violence in Tallahassee.

She said she knew nothing about the Heller case specifically.

But she said: "If we were victims on its bond."

Hassler said her greatest is that a judge's suggestion person from using the

"It essentially the victim's fear. Sue Hand, Favor House, a Pe for abuse victims.

"When we send the only way we victim is to incarc we're putting t wrong foot."

She called G

"That's ab fear," she judges, there

Hand sta of the victi

Son in family case free again

accusations hearing

Mother relieved that son is jailed again after threat

By Ginny Graybiel
News Journal staff writer

A man accused of threatening to kill his mother and stepfather while he was out on bond on a charge of beating the mother is back in jail.

Grover Heller, 37, was arrested Tuesday afternoon in Lynn Haven and taken to the Bay County Jail.

"Thank goodness," Heller's mother, Jeanette Strangway, said when she learned of his arrest. "Jail is where he needs to be."

The 63-year-old woman said she and her 67-year-old husband, Chuck, left their Northeast Pensacola home in fear Monday after receiving another threatening telephone call from her son. They spent the night in their motor home.

Heller's arrest came a day after a News Journal story detailing Escambia County Judge William Green's handling of Heller's case.

Green asked the Strangways during an Oct. 26 bond-revocation hearing if they wanted to be in jail for protection from their son.

The Strangways had told the judge that Heller telephoned them with the message: "I got two bullets. One for you. One for Pops."

The couple, who later said they were astounded and insulted by Green's question, said no. The judge then decided to revoke Heller's bond.

Green subsequently said he occasionally asks alleged victims of domestic violence if they want to go to jail to help him judge how serious a threat a defendant poses. He acknowledged that he cannot put victims in jail.

Green had released Heller from jail on Oct. 12, following his arrest the day before on a battery charge. His mother said he shoved her against a door and beat her.

Escambia County sheriff's officials did not know Monday night when Heller would be returned to the Escambia County Jail.

Heller was not present for the hearing in which his bond was revoked because his public defender could not locate him.

Green ordered that Heller be brought before him for further consideration of the bond issue within 24 hours of his return to the local jail.

Heller's trial is scheduled for Dec. 27 before Green.

That's right. Instead of revoking Grover Heller's bond and putting this abusive punk in jail, Judge William Green offered to put his elderly parents in jail! Incredible.

The couple left Judge Green's courtroom "visibly shaken" and were quoted by the *Pensacola News Journal* as saying "Am I hearing right? Did he (Judge Green) ask if my husband and I wanted to be incarcerated?"

When asked by reporters why he offered to jail the couple, ages 63 and 67 respectively, Judge Green said he was "testing them" to see if they were really as afraid of their abusive son as they said they were. Testing them?

Since when does an elderly, law-abiding couple need to be "tested" by a sitting County Judge who is supposed to protect them?

A shocking lack of compassion for the victims of violent crime!

You can do something about it. You can Vote **NO** on Judge William Green.

Vote NO on Judge William Green on Tuesday, September 1st.

EDITORIALS

Finger jabbed in justice's eye

"There is no such thing as justice—in or out of court."
—Clarence Darrow, 1936

Nearly 60 years after he uttered those words, the attorney who argued the Scopes "Monkey" trial would be no less correct given Jeanette and Clarence Strangway's encounter in an Escambia County courtroom.

The Strangways, who appeared before Escambia County Judge William Green to plead for protection from their son, no doubt expected the court to order Grover Heller's arrest. He had, after all, been arrested for battering his mother. And after being released on a signature bond, had begun a series of harassing telephone calls.

And he had told them, "I got two bullets, One for you. One for Pops," Mrs. Strangway said. Re-arrest seemed reasonable.

What they got was unreasonable. Green asked the Strangways if they wanted him to put them in the Escambia County Jail for their own protection until Heller's battery case was resolved.

The Strangways were thunderstruck. Green was treating them as criminals, offering to lock them up for safety until the hearing.

The son has since been re-arrested, but not because of the threats. His bond was revoked because his public defender could not find him.

The couple has said they will not appear again before Green, which means that in all likelihood prosecutors will have to drop the battery charge against the son. A man who may be guilty of domestic violence may walk away unfettered.

Darrow's words ring loud and clear.

Green may have been well intentioned, and he may well have been trying to determine the severity of the couple's concern. But the intention and result went askew.

The couple now fears the bench, and believes that victims, not criminals, may end up behind bars. Others who have heard of the case may share their fears. Which is opposite what is needed.

With domestic violence a significant and growing problem, the crime must be easier, not harder, to report.

Compassionate processes must be found to encourage people to seek solutions, not to chase them away for fear that they will be victimized by the courts as well.

Judges also need to consider the potential for violence and use cash bonds rather than signature bonds. That might prevent or at least delay a suspect's return to the street, possibly to seek revenge.

As Sue Hand, executive director of Favor House, a Pensacola shelter for abuse victims, says, "When we send a message that the only way we can protect a victim is to incarcerate them, then we're putting the shoe on the wrong foot."

The Strangways are bitter, frustrated and frightened.

Until the son's arrest, they bolted the doors to their home, drew the curtains and jumped at every unexplained bump and creak. Perhaps they will again if he is released.

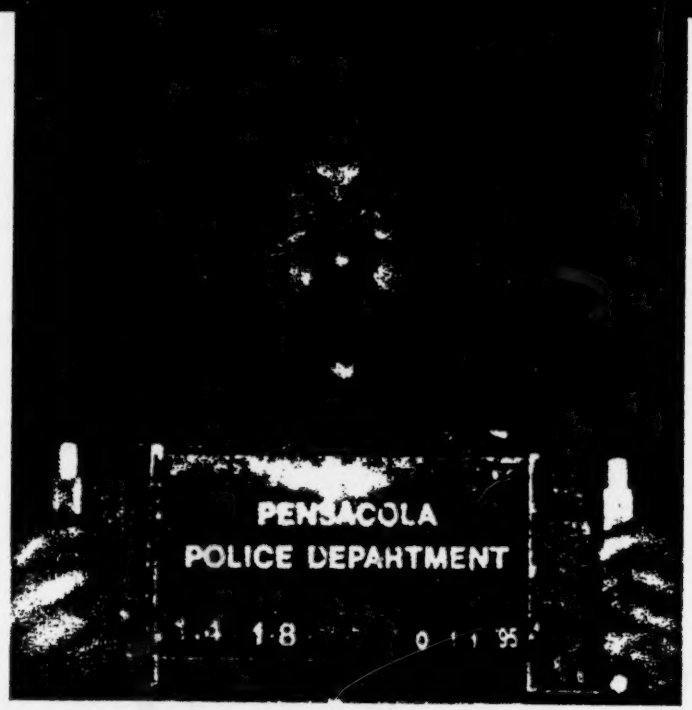
As Darrow suggested, justice, in this case, went astray.

What kind of man would beat up his own mother?

Meet Grover Heller. He was arrested on October 11, 1995 for battery after he grabbed his 63-year-old mother, slammed her against a door and beat her with his fists . . . sending her to the hospital.

Incredibly, County Judge William Green released this thug the very next day.

Soon after his release, Heller began making threatening phone calls to his parents telling them "I got a bullet for you, and one for pops." The elderly couple returned to Judge William Green in a panic, seeking to have their son returned to jail for their protection.



What Did Judge William Green Do?

– See Inside –

APPENDIX C

Supreme Court of Florida

WEDNESDAY, MARCH 26, 2003

CASE NO.: SC96629

INQUIRY CONCERNING A JUDGE, NO. 99-09 RE: PATRICIA KINSEY

The Respondent's Motion for Rehearing is hereby denied.

ANSTEAD, C.J., and WELLS, PARIENTE, LEWIS and QUINCE, JJ., and SHAW and HARDING, Senior Justices, concur.

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Test:

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HON. PATRICIA KINSEY, JUDGE
HON. HARVEY GOLDSTEIN, JUDGE
HON. JAMES R. JORGENSON, JUDGE
JOHN R. BERANEK